

COMPILATION TORTURE UNDER INTERNATIONAL LAW

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PART I: INTERNATIONAL NORMS PROHIBITING TORTURE

I Prohibition of torture in universal texts

1. Texts adopted by the United Nations

1.1. Prohibition of Torture in United Nations Conventions

1.1.1. International Covenant on Civil and Political Rights, 1966¹

Article 7

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

1.1.2 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984²

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognising that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

¹ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966. Entry into force 23 March 1976.

² Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984. Entry into force 26 June 1987.

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

PART I

Article 1

1. For the purposes of this Convention, 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.
2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

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

Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:
 - (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
 - (b) When the alleged offender is a national of that State;
 - (c) When the victim is a national of that State if that State considers it appropriate.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary inquiry into the facts.
3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.
4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.
2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases

referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

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

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.
2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion

1.1.3 Convention on the Rights of the Child, 1989³

Article 37

States Parties shall ensure that:

- a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

1.2. Prohibition of Torture in Statutes of International Tribunals

1.2.1 Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law committed in the Territory of former Yugoslavia (1993)⁴

Article 5: Crimes against humanity

The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation;
- (e) imprisonment;
- (f) torture;

³ Adopted by the United Nations General Assembly resolution 44/25 of 20 November 1989; Entry into force 2 September 1990.

⁴ Adopted by the United Nations Security Council on 25 May 1993

- (g) rape;
- (h) persecutions on political, racial and religious grounds;
- (i) other inhumane acts.

1.2.2. Tribunal on Rwanda, 1994⁵

Article 3: Crimes against humanity

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation;
- (e) Imprisonment ;
- (f) Torture;
- (g) Rape;
- (h) Persecutions on political, racial and religious grounds;
- (i) Other inhumane acts.

Article 4: Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II

The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:

- (a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- (b) Collective punishments;
- (c) Taking of hostages;
- (d) Acts of terrorism;
- (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- (f) Pillage;
- (g) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;
- (h) Threats to commit any of the foregoing acts.

⁵ Resolution 955 (1994) adopted by the Security Council at its 3453rd meeting, on 8 November 1994

1.2.3. Rome statute of the International Criminal Court, 1998⁶

Article 7: Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

- (a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- (b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- (c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- (d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- (e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
- (f) "Forced pregnancy" means the unlawful confinement, of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or

⁶ Adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998.

carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

- (g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
 - (h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
 - (i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.
3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

1.3 Prohibition of Torture in United Nations Non Binding Texts

1.3.1. Universal Declaration on Human Rights, 1948

Article 5

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

1.3.2. Declaration on the protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1975⁷

Article 1

1. For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.
2. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

⁷ Adopted by the UN General Assembly resolution 3452 (XXX) of 9 December 1975.

Article 2

Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights .

Article 3

No State may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Article 4

Each State shall, in accordance with the provisions of this Declaration, take effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment from being practised within its jurisdiction.

Article 5

The training of law enforcement personnel and of other public officials who may be responsible for persons deprived of their liberty shall ensure that full account is taken of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment. This prohibition shall also, where appropriate, be included in such general rules or instructions as are issued in regard to the duties and functions of anyone who may be involved in the custody or treatment of such persons.

Article 6

Each State shall keep under systematic review interrogation methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty in its territory, with a view to preventing any cases of torture or other cruel, inhuman or degrading treatment or punishment.

Article 7

Each State shall ensure that all acts of torture as defined in article 1 are offences under its criminal law. The same shall apply in regard to acts which constitute participation in, complicity in, incitement to or an attempt to commit torture.

Article 8

Any person who alleges that he has been subjected to torture or other cruel, inhuman or degrading treatment or punishment by or at the instigation of a public official shall have the right to complain to, and to have his case impartially examined by, the competent authorities of the State concerned.

Article 9

Wherever there is reasonable ground to believe that an act of torture as defined in article 1 has been committed, the competent authorities of the State concerned shall promptly proceed to an impartial investigation even if there has been no formal complaint.

Article 10

If an investigation under article 8 or article 9 establishes that an act of torture as defined in article 1 appears to have been committed, criminal proceedings shall be instituted against the alleged offender or offenders in accordance with national law. If an allegation of other forms of cruel, inhuman or degrading treatment or punishment is considered to be well founded, the alleged offender or offenders shall be subject to criminal, disciplinary or other appropriate proceedings.

Article 11

Where it is proved that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed by or at the instigation of a public official, the victim shall be afforded redress and compensation in accordance with national law.

Article 12

Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings.

1.3.3. Standard Minimum Rules for the Treatment of Prisoners, 1977⁸*Discipline and punishment**Article 31*

Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

Article 32

- a) Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.
- b) The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be

⁸ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

contrary to or depart from the principle stated in rule 31.

- c) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.

Instruments of restraint

Article 33

Instruments of restraint, such as handcuffs, chains, irons and strait-jacket, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

- a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;
- b) On medical grounds by direction of the medical officer;
- c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.

1.3.4. Code of Conduct for Law Enforcement Officials, 1979⁹

Article 5

No Law Enforcement Official may inflict , instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as state of war or threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

1.3.5. 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, 1982¹⁰

Article 1

Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.

⁹ Annexed to General Assembly Resolution 34/169 of 17 December 1979

¹⁰ Adopted by General Assembly resolution 37/194 of 18 December 1982

Article 2

It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment¹¹.

Article 3

It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.

Article 4

It is a contravention of medical ethics for health personnel, particularly physicians:

- a) To apply their knowledge and skills in order to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical or mental health or condition of such prisoners or detainees and which is not in accordance with the relevant international instruments¹²;
- b) To certify, or to participate in the certification of, the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant international instruments, or to participate in any way in the infliction of any such treatment or punishment which is not in accordance with the relevant international instruments.

Article 5

It is a contravention of medical ethics for health personnel, particularly physicians, to participate in any procedure for restraining a prisoner or detainee unless such a procedure is determined in accordance with purely medical criteria as being necessary for the protection of the physical or mental health or the safety of the prisoner or detainee himself, of his fellow prisoners or detainees, or of his guardians, and presents no hazard to his physical or mental health.

Article 6

There may be no derogation from the foregoing principles on any ground whatsoever, including public emergency.

¹¹ See the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (resolution 3452 (XXX))

¹² Particularly the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Standard Minimum Rules for the Treatment of Prisoners

1.3.6. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988¹³

Principle 1

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Principle 6

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.* No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

1.3.7. United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990¹⁴

K. Limitations of physical restraint and the use of force

63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.

64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorised and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.

65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

L. Disciplinary procedures

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or

¹³ Adopted by the United Nations General Assembly resolution 43/173 of 9 December 1988

¹⁴ Adopted by the United Nations General Assembly resolution 45/113 of 14 December 1990

denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

1.3.8. Declaration on the Protection of all Persons from Enforced Disappearance 1992¹⁵

Article 1

- a) Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.
- b) Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.

2. Prohibition of Torture in Humanitarian Law

2.1 Geneva Conventions, 1949¹⁶

Common Article 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- a) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

¹⁵ Adopted by the General Assembly in Resolution 47/133 of 18 December 1992

¹⁶ Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949. Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949. Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949. Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

- b) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

2.2. Additional Protocol n°2 to the Geneva Conventions, 1977¹⁷

Article 4 – Fundamental guarantees

2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph I are and shall remain prohibited at any time and in any place whatsoever:

- (a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- (b) collective punishments;
- (c) taking of hostages;
- (d) acts of terrorism;
- (e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form or indecent assault;
- (f) slavery and the slave trade in all their forms;
- (g) pillage;
- (h) threats to commit any or the foregoing acts.

¹⁷ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

II Prohibition of Torture and III-Treatment in Regional Texts

1. Europe

1.1. Texts adopted by the Council of Europe

1.1.1 Convention for protection of human rights and fundamental freedoms, 1950¹⁸

Article 3: Prohibition of torture

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

1.1.2. Resolution 690 of the parliamentary Assembly on the Declaration on the Police, 1979¹⁹

Article 3

Summary execution, torture and other forms of inhuman or degrading treatment or punishment remain prohibited in all circumstances. A police officer is under an obligation to disobey or disregard any order or instruction involving such measures.

1.1.3. European prison rules, 1987²⁰

Article 37

Collective punishments, corporal punishment, punishment by placing in dark cell , and other cruel, inhuman degrading punishment shall be completely prohibited as punishment for disciplinary offences.

Article 38

- a) Punishment by disciplinary confinement and any other punishment which might have an adverse effect on the physical or mental health of the prisoner shall only be imposed if the medical officer, after examination, certifies in writing that the prisoner is fit to sustain it.
- b) In no case may such punishment be contrary to, or depart from, the principles stated in Rule 37.
- c) The medical officer shall visit daily prisoner undergoing such punishment and shall advise the director if the termination or alteration of the punishment is considered necessary on grounds of physical or mental health.

Instruments of restraint

¹⁸ Adopted in Rome, 4 November 1950

¹⁹ Adopted by the Parliamentary Assembly of the Council of Europe, 8 May 1979

²⁰ Recommendation No. R(87)3 adopted by the Committee of Ministers of the Council of Europe on 12 February 1987

Article 39

The use of chains and irons shall be prohibited. Handcuffs, restraintjackets and other body restraints shall never be applied as a punishment. They shall not be used except in the following circumstances:

- a) if necessary, as a precaution against escape during transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority unless that authority decides otherwise;
- b) on medical grounds by direction and under the supervision of the medical officer;
- c) by order of the director, if other methods of control fail, in order to protect a prisoner from self-injury, injury to others or to prevent serious damage to property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.

Article 40

The patterns and manner of use of the instrument of restraint authorised in the preceding paragraph shall be decided by law or regulation. such instruments must not be applied for any longer time than strictly necessary.

1.2. Text adopted by the Organisation for the Security and Co-operation in Europe

Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990²¹

*Article 16:**The participating States*

16.1 reaffirm their commitment to prohibit torture and other cruel, inhuman or degrading treatment or punishment, to take effective legislative, administrative, judicial and other measures to prevent and punish such practices, to protect individuals from any psychiatric or other medical practices that violate human rights and fundamental freedoms and to take effective measures to prevent and punish such practices;

16.2 intend, as a matter of urgency. to consider acceding to the Convention against Torture and Other Cruel, Inhuman or Degrading treatment or Punishment , if they have not yet done so, and recognising the competences of the Committee against Torture under articles 21 and 22 of Convention and withdrawing reservations regarding the competence of the Committee under article 20;

²¹ Adopted in Copenhagen, 29 June 1990

16.3 stress that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture;

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

16.5 will keep under systematic review interrogation rules, instruction, methods practices as well as arrangements for the custody and treatment of persons subjected to any form or arrest, detention or imprisonment in any territory under their jurisdiction, with a view to preventing any cases of torture.

16.6 will take up with priority for consideration and for appropriate action, in accordance with the agreed measures and procedures for the effective implementation of the commitments relating to the human dimension of the CSCE, any cases of torture and other inhuman or degrading treatment or punishment made known to the through official channels or coming from any other reliable source of information;

16.7 will act upon the understanding that preserving and guaranteeing the life and security of an individual subjected to any form of torture and other inhuman or degrading treatment or punishment will be the sole criterion in determining the urgency and priorities to be accorded in taking appropriate remedial action; and, therefore, the consideration of any cases of torture and other inhuman or degrading treatment or punishment within the framework of any international body or mechanism may not be invoked as a reason for refraining from consideration and appropriate action in accordance with the agreed measures and procedures for the effective implementation of the commitments relating to the human dimension of the CSCE.

1.3. Text adopted by the Commonwealth of Independent States

Convention on human rights and fundamental freedoms, 1995²²

Article 3

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No one shall be subjected to medical or scientific experiments without his free consent.

²² Adopted in Minsk by the Commonwealth of independent States, 26 May 1995

2. America

2.1. American Declaration of the Rights and Duties of Man, 1948²³

Article 1

Every human being has the right to life, liberty and the security of his person.
Right to life, liberty and personal security.

Article 25

(...) Every individual who has been deprived of his liberty 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.

2.2. American Convention on Human Rights, 1978²⁴

Article 5: Right to Human Treatment

3. 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.

2.3. Inter-American Convention to Prevent and Punish Torture, 1987²⁵

The American States signatory to the present Convention,
Aware of the provision of the American Convention on Human Rights that no one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment;

Reaffirming that all acts of torture or any other cruel, inhuman, or degrading treatment or punishment constitute an offense against human dignity and a denial of the principles set forth in the Charter of the Organization of American States and in the Charter of the United Nations and are violations of the fundamental human rights and freedoms proclaimed in the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights;

Noting that, in order for the pertinent rules contained in the aforementioned global and regional instruments to take effect, it is necessary to draft an Inter-American Convention that prevents and punishes torture;

Reaffirming their purpose of consolidating in this hemisphere the conditions that make for recognition of and respect for the inherent dignity of man, and ensure the full exercise of his fundamental rights and freedoms,

²³ Adopted by the Ninth International Conference of American States, May 2, 1948

²⁴ Adopted by the Inter-American Specialized Conference on Human Rights of the Organization of American States, San José, Costa Rica, 22 November 1969. Entered into force July 18, 1978,

²⁵ Adopted by the 15th regular session of the General Assembly of the Organization of American States, Cartagena de Indias, Colombia, 9 December 1985. Entered into force February 28, 1987

Have agreed upon the following:

Article 1

The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

Article 2

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

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

Article 3

The following shall be held guilty of the crime of torture:

- a) A public servant or employee who acting in that capacity orders, instigates or induces the use of torture, or who directly commits it or who, being able to prevent it, fails to do so.
- b) A person who at the instigation of a public servant or employee mentioned in subparagraph (a) orders, instigates or induces the use of torture, directly commits it or is an accomplice thereto.

Article 4

The fact of having acted under orders of a superior shall not provide exemption from the corresponding criminal liability.

Article 5

The existence of circumstances such as a state of war, threat of war, state of siege or of emergency, domestic disturbance or strife, suspension of constitutional guarantees, domestic political instability, or other public emergencies or disasters shall not be invoked or admitted as justification for the crime of torture.

Neither the dangerous character of the detainee or prisoner, nor the lack of security of the prison establishment or penitentiary shall justify torture.

Article 6

In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction.

The States Parties shall ensure that all acts of torture and attempts to commit torture are offences under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature.

The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

Article 7

The States Parties shall take measures so that, in the training of police officers and other public officials responsible for the custody of persons temporarily or definitively deprived of their freedom, special emphasis shall be put on the prohibition of the use of torture in interrogation, detention, or arrest.

The States Parties likewise shall take similar measures to prevent other cruel, inhuman, or degrading treatment or punishment.

Article 8

The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case.

Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.

After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.

Article 9

The States Parties undertake to incorporate into their national laws regulations guaranteeing suitable compensation for victims of torture.

None of the provisions of this article shall affect the right to receive compensation that the victim or other persons may have by virtue of existing national legislation.

Article 10

No statement that is verified as having been obtained through torture shall be admissible as evidence in a legal proceeding, except in a legal action taken against a person or persons accused of having elicited it through acts of torture, and only as evidence that the accused obtained such statement by such means.

Article 11

The States Parties shall take the necessary steps to extradite anyone accused of having committed the crime of torture or sentenced for commission of that crime, in accordance with their respective national laws on extradition and their international commitments on this matter.

Article 12

Every State Party shall take the necessary measures to establish its jurisdiction over the crime described in this Convention in the following cases:

- a. When torture has been committed within its jurisdiction;
- b. When the alleged criminal is a national of that State; or
- c. When the victim is a national of that State and it so deems appropriate.

Every State Party shall also take the necessary measures to establish its jurisdiction over the crime described in this Convention when the alleged criminal is within the area under its jurisdiction and it is not appropriate to extradite him in accordance with

This Convention does not exclude criminal jurisdiction exercised in accordance with domestic law.

Article 13

The crime referred to in Article 2 shall be deemed to be included among the extraditable crimes in every extradition treaty entered into between States Parties. The States Parties undertake to include the crime of torture as an extraditable offence in every extradition treaty to be concluded between them.

Every State Party that makes extradition conditional on the existence of a treaty may, if it receives a request for extradition from another State Party with which it has no extradition treaty, consider this Convention as the legal basis for extradition in respect of the crime of torture. Extradition shall be subject to the other conditions that may be required by the law of the requested State.

States Parties which do not make extradition conditional on the existence of a treaty shall recognize such crimes as extraditable offences between themselves, subject to the conditions required by the law of the requested State.

Extradition shall not be granted nor shall the person sought be returned when there are grounds to believe that his life is in danger, that he will be subjected to torture or to cruel, inhuman or degrading treatment, or that he will be tried by special or ad hoc courts in the requesting State.

Article 14

When a State Party does not grant the extradition, the case shall be submitted to its competent authorities as if the crime had been committed within its jurisdiction, for the purposes of investigation, and when appropriate, for criminal action, in accordance with its national law. Any decision adopted by these authorities shall be communicated to the State that has requested the extradition.

Article 15

No provision of this Convention may be interpreted as limiting the right of asylum, when appropriate, nor as altering the obligations of the States Parties in the matter of extradition.

Article 16

This Convention shall not limit the provisions of the American Convention on Human Rights, other conventions on the subject, or the Statutes of the Inter-American Commission on Human Rights, with respect to the crime of torture.

3. Africa**3.1. African [Banjul] Charter on Human and Peoples' Rights, 1981²⁶***Article 5*

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

²⁶ Adopted by the Organisation of African Unity, 27 June 1981

4. Others

The Arab Charter on Human Rights, 1994²⁷

(Unofficial Translation from the Arabic)

Article 13

- a) The State parties shall protect every person in their territory from physical or psychological torture, or from cruel, inhuman, degrading treatment. (The State parties) shall take effective measures to prevent such acts; performing or participating in them shall be considered a crime punished by law.
- b) No medical or scientific experimentation shall be carried-out on any person without his free consent:

²⁷ Approved September 15, 1994

PART II INTERNATIONAL MECHANISMS FOR THE FIGHT AGAINST TORTURE

I. REPORTING MECHANISMS

1. Committee against Torture (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984)²⁸

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

Article 19

- 1) The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.
- 2) The Secretary-General of the United Nations shall transmit the reports to all States Parties.
- 3) Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.
- 4) The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

²⁸ Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984
entry into force 26 June 1987, in accordance with article 27 (1)

2. Human Rights Committee (International Covenant on Civil and Political Rights, 1966)²⁹

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Protocol as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

Article 40

- 1) The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:
 - (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
 - (b) Thereafter whenever the Committee so requests.
- 2) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.
- 3) The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.
- 4) The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.
- 5) The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

3. Committee on the Rights of the Child (Convention on the Rights of the Child, 1989)³⁰

Article 43

1) In the purpose of examining the progress made by States Parties in achieving the realisation of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

Article 44

- 1) States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

²⁹ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. Entered into force 23 March 1976.

³⁰ Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. Entered into force 2 September 1990.

- (a) Within two years of the entry into force of the Convention for the State Party concerned;
 - (b) Thereafter every five years.
- 2) Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.
 - 3) A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.
 - 4) The Committee may request from States Parties further information relevant to the implementation of the Convention.
 - 5) The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.
 - 6) States Parties shall make their reports widely available to the public in their own countries.

4. African Commission on Human and Peoples' Rights (African Charter on Human and Peoples' Rights, 1981)

Article 62

Each State party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter.

II INDIVIDUAL COMPLAINTS MECHANISMS

1. Quasi-judicial mechanisms

1.1. Committee against Torture (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984)³¹

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

³¹ Adopted and opened for signature, ratification and accession by UN General Assembly resolution 39/46 of 10 December 1984. Entry into force : 26 June 1986.

Article 22

- 1) A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.
- 2) The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.
- 3) Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
- 4) The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.
- 5) The Committee shall not consider any communications from an individual under this article unless it has ascertained that:
 - (a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;
 - (b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.
- 6) The Committee shall hold closed meetings when examining communications under this article.
- 7) The Committee shall forward its views to the State Party concerned and to the individual.
- 8) The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

1.2 Human Rights Committee (Optional Protocol to the International Covenant on Civil and Political Rights, 1966)³²

The States Parties to the present Protocol,

Considering that in order further to achieve the purposes of the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.

Have agreed as follows:

Article 1

A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

Article 2

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

Article 3

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

Article 4

- 1) Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.
- 2) Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

³² Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966; Entered into force 23 March 1976.

Article 5

- 1) The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.
- 2) The Committee shall not consider any communication from an individual unless it has ascertained that:
 - (a) The same matter is not being examined under another procedure of international investigation or settlement;
 - (b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.
- 3) The Committee shall hold closed meetings when examining communications under the present Protocol.
- 4) The Committee shall forward its views to the State Party concerned and to the individual.

Article 6

The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

Article 7

Pending the achievement of the objectives of resolution 1514(XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

Article 8

- 1) The present Protocol is open for signature by any State which has signed the Covenant.
- 2) The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
- 3) The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.
- 4) Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
- 5) The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 9

- 1) Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.
- 2) For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol

shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 10

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 11

- 1) Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
- 2) Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.
- 3) When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 12

- 1) Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.
- 2) Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

Article 13

Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph I, of the Covenant of the following particulars:

- (a) Signatures, ratifications and accessions under article 8;
- (b) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;
- (c) Denunciations under article 12.

Article 14

- 1) The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

- 2) The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

1.3 African Commission on Human and Peoples' Rights (African Charter on Human and Peoples Rights, 1981)

Article 55

1. Before each Session, the Secretary of the Commission shall make a list of the Communications other than those of States parties to the present Charter and transmit them to the Members of the Commission, who shall indicate which communications should be considered by the commission.
2. A communication shall be considered by the Commission if a simple majority of its members so decide.

Article 56

Communication relating to human and peoples' rights referred to in Article 55 received by the commission, shall be considered if they:

- 1 . indicate their authors even if the latter request anonymity,
2. are compatible with the Charter of the Organization of African Unity or with the present Charter,
3. are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity,
4. are not based exclusively on news disseminated through the mass media,
5. are sent after exhausting local remedies, if any unless it is obvious that this procedure is unduly prolonged,
6. are submitted within a reasonable period from the time local remedies are exhausted or from the date the commission is seized with the matter, and
7. do not deal with cases which have been settled by these states involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter.

2. Judicial mechanisms

2.1. European Court of Human Rights (European Convention on Human Rights, 1950)³³

Article 19: Establishment of the Court

To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis.

Article 34 : Individual applications

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto.

³³ As amended by Protocol n°11, adopted by the Council of Europe Committee of Minister on 11 May 1994. Entered into force on 1 November 1998.

The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

Article 35 : Admissibility criteria

- 1) The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.
- 2) The Court shall not deal with any individual application submitted under Article 34 that
 - (a) is anonymous; or
 - (b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.
- 3) The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application.
- 4) The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

Article 36 : Third-party intervention

- 1) In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.
- 2) The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

Article 37 : Striking out applications

- 1) The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
 - (a) the applicant does not intend to pursue his application; or
 - (b) the matter has been resolved; or
 - (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires.

- 2) The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

Article 38 : Examination of the case and friendly settlement proceedings

- 1) If the Court declares the application admissible, it shall

- (a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities;
 - (b) place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the protocols thereto.
- 2) Proceedings conducted under paragraph 1.b shall be confidential.

Article 39 : Finding of a friendly settlement

If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

Article 40 : Public hearings and access to documents

- 1) Hearings shall be public unless the Court in exceptional circumstances decides otherwise.
- 2) Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

Article 41 : Just satisfaction

If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

Article 42 : Judgments of Chambers

Judgments of Chambers shall become final in accordance with the provisions of Article 44, paragraph 2.

Article 43 : Referral to the Grand Chamber

- 1) Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.
- 2) A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the protocols thereto, or a serious issue of general importance.
- 3) If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

Article 44 : Final judgments

- 1) The judgment of the Grand Chamber shall be final.
- 2) The judgment of a Chamber shall become final
 - (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or
 - (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or

(c) when the panel of the Grand Chamber rejects the request to refer under Article 43.

3) The final judgment shall be published.

Article 45 : Reasons for judgments and decisions

- 1) Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.
- 2) If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 46 : Binding force and execution of judgments

- 1) The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
- 2) The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

2.2. Interamerican Court of human rights (American Convention on Human Rights, 1969)³⁴

Article 33

The following organs shall have competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to this Convention:

- a. the Inter-American Commission on Human Rights, referred to as "The Commission;" and
- b. the Inter-American Court of Human Rights, referred to as "The Court."

Article 44

Any person or group of persons, or any non governmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.

Article 45

- 1) Any State Party may, when it deposits its instrument of ratification of or adherence to this Convention, or at any later time, declare that it recognizes the competence of the Commission to receive and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention.
- 2) Communications presented by virtue of this article may be admitted and examined only if they are presented by a State Party that has made a declaration recognizing the aforementioned competence of the Commission. The Commission shall not admit any communication against a State Party that has not made such a declaration.

³⁴ Adopted by the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969. Entered into force July 18, 1978.

3) A declaration concerning recognition of competence may be made to be valid for an indefinite time, for a specified period, or for a specific case.

Declarations shall be deposited with the General Secretariat of the Organization of American States, which shall transmit copies thereof to the member states of that Organization.

Article 46

- 1) Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:
 - (a) that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;
 - (b) that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment;
 - (c) that the subject of the petition or communication is not pending in another international proceeding for settlement; and
 - (d) that, in the case of Article 44, the petition contains the name, nationality, profession, domicile, and signature of the person or persons or of the legal representative of the entity lodging the petition.
- 2) The provisions of paragraphs 1.a and 1.b of this article shall not be applicable when:
 - (a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
 - (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
 - (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

Article 47

The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if:

- (a) any of the requirements indicated in Article 46 has not been met;
- (b) the petition or communication does not state facts that tend to establish a violation of the rights guaranteed by this Convention;
- (c) the statements of the petitioner or of the state indicate that the petition or communication is manifestly groundless or obviously out of order; or
- (d) the petition or communication is substantially the same as one previously studied by the Commission or by another international organization.

Article 48

- 1) When the Commission receives a petition or communication alleging violation of any of the rights protected by this Convention, it shall proceed as follows:
 - (a) If it considers the petition or communication admissible, it shall request information from the government of the state indicated as being responsible for the alleged violations and shall furnish that government a transcript of the pertinent portions of the petition or communication. This information shall be submitted within a reasonable period to be determined by the Commission in accordance with the circumstances of each case.

- (b) After the information has been received, or after the period established has elapsed and the information has not been received, the Commission shall ascertain whether the grounds for the petition or communication still exist. If they do not, the Commission shall order the record to be closed.
- (c) The Commission may also declare the petition or communication inadmissible or out of order on the basis of information or evidence subsequently received.
- (d) If the record has not been closed, the Commission shall, with the knowledge of the parties, examine the matter set forth in the petition or communication in order to verify the facts. If necessary and advisable, the Commission shall carry out an investigation, for the effective conduct of which it shall request, and the states concerned shall furnish to it, all necessary facilities.
- (e) The Commission may request the states concerned to furnish any pertinent information and, if so requested, shall hear oral statements or receive written statements from the parties concerned.
- (f) The Commission shall place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.

However, in serious and urgent cases, only the presentation of a petition or communication that fulfills all the formal requirements of admissibility shall be necessary in order for the Commission to conduct an investigation with the prior consent of the state in whose territory a violation has allegedly been committed.

Article 49

If a friendly settlement has been reached in accordance with paragraph 1.f of Article 48, the Commission shall draw up a report, which shall be transmitted to the petitioner and to the States Parties to this Convention, and shall then be communicated to the Secretary General of the Organization of American States for publication. This report shall contain a brief statement of the facts and of the solution reached. If any party in the case so requests, the fullest possible information shall be provided to it.

Article 50

- 1) If a settlement is not reached, the Commission shall, within the time limit established by its Statute, draw up a report setting forth the facts and stating its conclusions. If the report, in whole or in part, does not represent the unanimous agreement of the members of the Commission, any member may attach to it a separate opinion. The written and oral statements made by the parties in accordance with paragraph 1.e of Article 48 shall also be attached to the report.
- 2) The report shall be transmitted to the states concerned, which shall not be at liberty to publish it.
- 3) In transmitting the report, the Commission may make such proposals and recommendations as it sees fit.

Article 51

- 1) If, within a period of three months from the date of the transmittal of the report of the Commission to the states concerned, the matter has not either been settled or submitted by the Commission or by the state concerned to the Court and its jurisdiction accepted, the Commission may, by the vote of an absolute majority of

its members, set forth its opinion and conclusions concerning the question submitted for its consideration.

- 2) Where appropriate, the Commission shall make pertinent recommendations and shall prescribe a period within which the state is to take the measures that are incumbent upon it to remedy the situation examined.
- 3) When the prescribed period has expired, the Commission shall decide by the vote of an absolute majority of its members whether the state has taken adequate measures and whether to publish its report.

Article 61

- 1) Only the States Parties and the Commission shall have the right to submit a case to the Court.
- 2) In order for the Court to hear a case, it is necessary that the procedures set forth in Articles 48 and 50 shall have been completed.

Article 62

- 1) A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.
- 2) Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court.
- 3) The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.

Article 63

- 1) If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.
- 2) In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

Article 64

- 1) The member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court.

- 2) The Court, at the request of a member state of the Organization, may provide that state with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments.

Article 65

To each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations.

Article 66

- 1) Reasons shall be given for the judgment of the Court.
- 2) If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to have his dissenting or separate opinion attached to the judgment.

Article 67

The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

Article 68

- 1) The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.
- 2) That part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state.

Article 69

The parties to the case shall be notified of the judgment of the Court and it shall be transmitted to the States Parties to the Convention.

2.3. African court on Human and Peoples' rights (Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, 1998)³⁵

Article 1: Establishment of the Court:

There shall be established within the Organization of African Unity an African Court on Human and Peoples' Rights hereinafter referred to as "the Court", the organization, jurisdiction and functioning of which shall be governed by the present Protocol.

Article 2 : Relationship between the Court and the Commission:

The Court shall, bearing in mind the provisions of this Protocol, complement the protective mandate of the African Commission on Human and Peoples' Rights hereinafter referred to as "the Commission", conferred upon it by the African Charter on Human and Peoples' Rights, hereinafter referred to as "the Charter".

³⁵ Adopted by the OAU Summit of Heads of State and Government, in Ouagadougou, Burkina Faso, 9 June 1998.

Article 3 : Jurisdiction

- 1) The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned.
- 2) In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

Article 4 : Advisory opinions

- 1) At the request of a Member State of the OAU, the OAU, any of its organs, or any African organization recognized by the OAU, the Court may provide an opinion on any legal matter relating to the Charter or any other relevant human rights instruments, provided that the subject matter of the opinion is not related to a matter being examined by the Commission.
- 2) The Court shall give reasons for its advisory opinions provided that every judge shall be entitled to deliver a separate or dissenting decision.

Article 5 : Acces to the court

The following are entitled to submit cases to the Court

- a. The Commission;
 - b. The State Party which has lodged a complaint to the Commission;
 - c. The State Party against which the complaint has been lodged at the Commission;
 - d. The State Party whose citizen is a victim of human rights violation;
 - e. African Intergovernmental Organizations.
- 1) When a State Party has an interest in a case, it may submit a request to the Court to be permitted to join.
 - 2) The Court may entitle relevant Non Governmental Organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with article 34 (6) of this Protocol.

Article 6 : Admissibility of cases

- 1) The Court, when deciding on the admissibility of a case instituted under article 5 (3) of this Protocol, may request the opinion of the Commission which shall give it as soon as possible.
- 2) The Court shall rule on the admissibility of cases taking into account the provisions of article 56 of the Charter.
- 3) The Court may consider cases or transfer them to the Commission.

Article 7 : Sources of law

The Court shall apply the provisions of the Charter and any other relevant human rights instruments ratified by the States concerned.

Article 8 : Consideration of cases

The Rules of Procedure of the Court shall lay down the detailed conditions under which the Court shall consider cases brought before it, bearing in mind the complementarity between the Commission and the Court.

Article 9 : Amicable settlement

The Court may try to reach an amicable settlement in a case pending before it in accordance with the provisions of the Charter.

Article 10 : Hearings and representation

- 1) The Court shall conduct its proceedings in public. The Court may, however, conduct proceedings in camera as may be provided for in the Rules of Procedure.
- 2) Any party to a case shall be entitled to be represented by a legal representative of the party's choice. Free legal representation may be provided where the interests of justice so require.
- 3) Any person, witness or representative of the parties, who appears before the Court, shall enjoy protection and all facilities, in accordance with international law, necessary for the discharging of their functions, tasks and duties in relation to the Court.

Article 27 : Findings

- 1) If the Court finds that there has been violation of human or peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.
- 2) In cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary.

Article 28

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

Article 29

The individual shall also have the duty:

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need;
2. To serve his national community by placing his physical and intellectual abilities at its service;
3. Not to compromise the security of the State whose national or resident he is;
4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened;
5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with the law;
6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;
7. To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society;
8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

Article 30

An African Commission on Human and Peoples' Rights, hereinafter called «the Commission», shall be established within the Organization of African Unity to promote human and peoples' rights and ensure their protection in Africa.

III VISITING MECHANISMS

1. European Committee for the Prevention of Torture (European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987³⁶)

The member States of the Council of Europe, signatory hereto,
 Having regard to the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms,
 Recalling that, under Article 3 of the same Convention, "no one shall be subjected to torture or to inhuman or degrading treatment or punishment";
 Noting that the machinery provided for in that Convention operates in relation to persons who allege that they are victims of violations of Article 3;
 Convinced that the protection of persons deprived of their liberty against torture and inhuman or degrading treatment or punishment could be strengthened by non-judicial means of a preventive character based on visits,
 Have agreed as follows:

CHAPTER I

Article 1

There shall be established a European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Committee"). The Committee shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.

Article 2

Each Party shall permit visits, in accordance with this Convention, to any place within its jurisdiction where persons are deprived of their liberty by a public authority.

Article 3

In the application of this Convention, the Committee and the competent national authorities of the Party concerned shall co-operate with each other.

CHAPTER II

Article 4

1) The Committee shall consist of a number of members equal to that of the Parties.

³⁶ Adopted by the Council of Europe Committee of Ministers on 26 November 1987 ; Entered into force 1 February 1989.

- 2) The members of the Committee shall be chosen from among persons of high moral character, known for their competence in the field of human rights or having professional experience in the areas covered by this Convention.
- 3) No two members of the Committee may be nationals of the same State.
- 4) The members shall serve in their individual capacity, shall be independent and impartial, and shall be available to serve the Committee effectively.

Article 5

- 1) The members of the Committee shall be elected by the Committee of Ministers of the Council of Europe by an absolute majority of votes, from a list of names drawn up by the Bureau of the Consultative Assembly of the Council of Europe; each national delegation of the Parties in the Consultative Assembly shall put forward three candidates, of whom two at least shall be its nationals.
- 2) The same procedure shall be followed in filling casual vacancies.
- 3) The members of the Committee shall be elected for a period of four years. They may only be re-elected once. However, among the members elected at the first election, the terms of three members shall expire at the end of two years. The members whose terms are to expire at the end of the initial period of two years shall be chosen by lot by the Secretary General of the Council of Europe immediately after the first election has been completed.

Article 6

- 1) The Committee shall meet in camera. A quorum shall be equal to the majority of its members. The decisions of the Committee shall be taken by a majority of the members present, subject to the provisions of Article 10, paragraph 2.
- 2) The Committee shall draw up its own rules of procedure.
- 3) The Secretariat of the Committee shall be provided by the Secretary General of the Council of Europe.

CHAPTER III

Article 7

- 1) The Committee shall organise visits to places referred to in Article 2. Apart from periodic visits, the Committee may organise such other visits as appear to it to be required in the circumstances.
- 2) As a general rule, the visits shall be carried out by at least two members of the Committee. The Committee may, if it considers it necessary, be assisted by experts and interpreters.

Article 8

- 1) The Committee shall notify the Government of the Party concerned of its intention to carry out a visit. After such notification, it may at any time visit any place referred to in Article 2.
- 2) A Party shall provide the Committee with the following facilities to carry out its task:
 - (a) access to its territory and the right to travel without restriction;
 - (b) full information on the places where persons deprived of their liberty are being held;
 - (c) unlimited access to any place where persons are deprived of their liberty, including the right to move inside such places without restriction;

- (d) other information available to the Party which is necessary for the Committee to carry out its task. In seeking such information, the Committee shall have regard to applicable rules of national law and professional ethics.
- 3) The Committee may interview in private persons deprived of their liberty.
 - 4) The Committee may communicate freely with any person whom it believes can supply relevant information.
 - 5) If necessary, the Committee may immediately communicate observations to the competent authorities of the Party concerned.

Article 9

- 1) In exceptional circumstances, the competent authorities of the Party concerned may make representations to the Committee against a visit at the time or to the particular place proposed by the Committee. Such representations may only be made on grounds of national defence, public safety, serious disorder in places where persons are deprived of their liberty, the medical condition of a person or that an urgent interrogation relating to a serious crime is in progress.
- 2) Following such representations, the Committee and the Party shall immediately enter into consultations in order to clarify the situation and seek agreement on arrangements to enable the Committee to exercise its functions expeditiously. Such arrangements may include the transfer to another place of any person whom the Committee proposed to visit. Until the visit takes place, the Party shall provide information to the Committee about any person concerned.

Article 10

- 1) After each visit, the Committee shall draw up a report on the facts found during the visit, taking account of any observations which may have been submitted by the Party concerned. It shall transmit to the latter its report containing any recommendations it considers necessary. The Committee may consult with the Party with a view to suggesting, if necessary, improvements in the protection of persons deprived of their liberty.
- 2) If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter.

Article 11

- 1) The information gathered by the Committee in relation to a visit, its report and its consultations with the Party concerned shall be confidential.
- 2) The Committee shall publish its report, together with any comments of the Party concerned, whenever requested to do so by that Party.
- 3) However, no personal data shall be published without the express consent of the person concerned.

Article 12

Subject to the rules of confidentiality in Article 11, the Committee shall every year submit to the Committee of Ministers a general report on its activities which shall be transmitted to the Consultative Assembly and made public.

Article 13

The members of the Committee, experts and other persons assisting the Committee are required, during and after their terms of office, to maintain the confidentiality of the facts or information of which they have become aware during the discharge of their functions.

Article 14

- 1) The names of persons assisting the Committee shall be specified in the notification under Article 8, paragraph 1.
- 2) Experts shall act on the instructions and under the authority of the Committee. They shall have particular knowledge and experience in the areas covered by this Convention and shall be bound by the same duties of independence, impartiality and availability as the members of the Committee.
- 3) A Party may exceptionally declare that an expert or other person assisting the Committee may not be allowed to take part in a visit to a place within its jurisdiction.

*CHAPTER IV**Article 15*

Each Party shall inform the Committee of the name and address of the authority competent to receive notifications to its Government, and of any liaison officer it may appoint.

Article 16

The Committee, its members and experts referred to in Article 7, paragraph 2 shall enjoy the privileges and immunities set out in the Annex to this Convention.

Article 17

- 1) This Convention shall not prejudice the provisions of domestic law or any international agreement which provide greater protection for persons deprived of their liberty.
- 2) Nothing in this Convention shall be construed as limiting or derogating from the competence of the organs of the European Convention on Human Rights or from the obligations assumed by the Parties under that Convention.
- 3) The Committee shall not visit places which representatives or delegates of Protecting Powers or the International Committee of the Red Cross effectively visit on a regular basis by virtue of the Geneva Conventions of 12 August 1919 and the Additional Protocols of 8 June 1977 thereto.

2. Committee against Torture (United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984) (Article 20)

Article 20:

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-

operate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.
3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.
4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.
5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

3. Sub-Committee against Torture (Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) (initial project)³⁷

The States Parties to the present Protocol,

Considering that in order to further achieve the purpose of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) it is appropriate to strengthen the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment, by resorting to non-judicial means of a preventive character based on visits,

Have agreed as follows:

Article 1

- 1) State Party to the Present Protocol agrees to permit visits, in accordance with this Protocol, to any place within its jurisdiction where persons deprived of their liberty by a public authority or at its instigation or with its consent or acquiescence are held or may be held.

³⁷ Initial text submitted to the UN Working Group of the Commission on Human Rights in 1992.

- 2) The object of the visits shall be to examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from other cruel, inhuman or degrading treatment or punishment in accordance with international standards.

Article 2

The Committee against Torture shall establish a Sub-Committee for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Sub-Committee); the Sub-Committee shall be responsible for organising missions to the States Parties to the present Protocol for the purposes stated in Article 1.

Article 3

In the application of this Protocol, the Sub-Committee and the competent national authorities of the State Party concerned shall co-operate with each other.

Article 4

- 1) The Sub-Committee shall consist of a maximum of 25 members. While there are less than 25 States Parties to the present Protocol, the number of members of the Sub-Committee shall be equal to that of the States Parties.
- 2) The members of the Sub-Committee shall be chosen from among persons of high moral character, having proven professional experience in the field of prison or police administration or in the various medical fields relevant to the treatment of persons deprived of their liberty or in the field of the international protection of human rights.
- 3) No two members of the Sub-Committee may be nationals of the same State.
- 4) The members of the Sub-Committee shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Sub-Committee effectively.

Article 5

- 1) The members of the Sub-Committee shall be elected by the Committee against Torture by an absolute majority of votes from a list of persons possessing the qualifications prescribed in article 4 and nominated by the States Parties to the present Protocol.
- 2) Within three months of the entry into force of the present Protocol, the accession of a new member or a vacancy, each State Party shall nominate three persons, at least two of whom shall possess its nationality. They shall be indicated in alphabetical order.
- 3) Subject to article 4, paragraph 1, the Committee against Torture shall hold elections whenever there is an accession to the present Protocol or a vacancy in the Sub-Committee.
- 4) A member shall be eligible for re-election if re-nominated.

Article 6

- 1) The members of the Sub-Committee shall be elected for a period of four years. However, among the members elected at the first election, the terms of five members, to be chosen by lot shall expire at the end of two years.
- 2) In the election of the members of the Sub-Committee, consideration shall be given to equitable geographical distribution of membership, to a proper balance

among the various fields of competence referred to in article 4, paragraph 2 and to the representation of different traditions and legal systems.

Article 7

- 1) The Sub-Committee shall meet for a regular session at least twice a year; for special sessions at the initiative of its Chairman or at the request of not less than one third of its members.
- 2) The Sub-Committee shall meet in camera. Half of the members shall constitute a quorum. The decisions of the Sub-Committee shall be taken by a majority of the members present, subject to article 14, paragraph 2.
- 3) The Sub-Committee shall draw up its own rules of procedure.
- 4) The Secretary General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee against Torture and the Sub-Committee under this Protocol.

Article 8

- 1) The Sub-Committee shall establish a programme of regular missions to each of the States Parties. Apart from regular missions, it shall also undertake such other missions as appear to it to be required in the circumstances.
- 2) The Sub-Committee shall postpone any such mission if the State Party concerned has agreed to a visit to its territory by the Committee against Torture pursuant to article 20, paragraph 3, of the Convention.

Article 9

- 1) If, on the basis of a regional convention, a system of visits to places of detention similar to the one of the present Protocol is in force for a State Party, the Sub-Committee shall only in exceptional cases, when required by important circumstances, send its own mission to such a State Party. It may, however, consult with the organs established under such regional conventions with a view to co-ordinating activities including the possibility of having one of its members participate in missions carried out under the regional conventions as an observer. Such an observer shall report to the Sub-Committee. This report shall be strictly confidential and shall not be made public.
- 2) The present Protocol does not affect the provisions of the Geneva Conventions of 12 August 1949 for the protection of victims of war and their Additional Protocols of 8 June 1977 by which the Protecting Powers and the International Committee of the Red Cross visit places of detention, or the right of any State Party to authorise the International Committee to visit places of detention in situations not covered by international humanitarian law.

Article 10

- 1) As a general rule, the missions shall be carried out by at least two members of the Sub-Committee, assisted by experts and interpreters if necessary.
- 2) No member of a delegation shall be a national of the State to be visited.

Article 11

- 1) Experts shall act on the instructions and under the authority of the Sub-Committee. They shall have particular knowledge and experience in the areas covered by this Protocol and shall be bound by the same duties of independence, impartiality and availability as the members of the Sub-Committee.

- 2) A State Party may exceptionally and for reasons given confidentially declare that an expert or other person assisting the Sub-Committee may not take part in a mission to its territory.

Article 12

- 1) The Sub-Committee shall notify the Government of the State Party concerned of its intention to organise a mission. After such notification, it may at any time visit any place referred to in article 1, paragraph 1.
- 2) The State Party within whose jurisdiction a mission is to take place or is being carried out shall provide the delegation with all the facilities necessary for the proper fulfilment of their tasks and shall not obstruct by any means or measures the programme of visits or any other activities which the delegation is carrying out specifically for or in relation to the visits. In particular, the State Party shall provide the delegation with the following facilities:
 - (a) access to its territory and the right to travel without restriction;
 - (b) full information on the places referred to in article 1, paragraph 1, including information requested about specific persons;
 - (c) unlimited access to any place referred to in article 1, paragraph 1, including the right to move inside such places without restriction;
 - (d) assistance in gaining access to places where the delegation has reason to believe that persons may be deprived of their liberty;
 - (e) producing any person deprived of his liberty whom the delegation wishes to interview, at the request of the delegation and at a convenient location
 - (f) other information available to the State Party which is necessary for the delegation to carry out its task.
- 3) Members of the delegation may interview in private, inside or outside his place of detention, without witnesses, and for the time they deem necessary, any person deprived of his liberty under the terms of article 1. They may also communicate without restriction with relatives, friends, lawyers and doctors of persons who are or have been deprived of their liberty, and with any other person or organisation that they think may be able to provide them with relevant information for their mission. In seeking such information, the delegation shall have regard to applicable rules of national law relating to data protection and principles of medical ethics.
- 4) No authority or official shall order, apply, permit or tolerate any sanction against any person or organisation for having communicated to the Sub-Committee or to the delegates any information, whether true or false, and no such person or organisation shall be otherwise prejudiced in any way.
- 5) In urgent cases the delegation shall at once submit observations and recommendations either of general or specific nature to the competent authorities of the State Party concerned.

Article 13

- 1) In the context of a mission, the competent authorities of the State Party concerned may make representations to the Sub-Committee or its delegation against a particular visit if urgent and compelling reasons relating to serious disorder in the particular place to be visited temporarily prevent the carrying out of the visit. .
- 2) Following any such representation, the Sub-Committee and the State Party shall immediately enter into consultations in order to clarify the situation and seek agreement on arrangements to enable the Sub-Committee to exercise its functions

expeditiously. Such arrangements may include the transfer to another place of any person whom the Sub-Committee proposed to visit. Until the visit takes place, the State Party shall provide information to the Sub-Committee about any person concerned.

Article 14

- 1) After each mission, the Sub-Committee shall draw up a report on the facts found during the mission, taking account of any observations which may have been submitted by the State Party concerned. It shall transmit to the latter its report containing any recommendations it considers necessary and may consult with the State Party with a view to suggesting, if necessary, improvements in the protection of persons deprived of their liberty.
- 2) If the State Party fails to co-operate or refuses to improve the situation in the light of the Sub-Committee's recommendations, the Committee against Torture may at the request of the Sub-Committee decide by a majority of its members, after the State Party has had an opportunity to make known its views, to make a public statement on the matter or to publish the Sub-Committee's report.
- 3) The Sub-Committee shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Sub-Committee may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.
- 4) In all other respects, the information gathered by the Sub-Committee and its delegation in relation to a mission, its report and its consultation with the State Party concerned shall remain confidential. Members of the Committee against Torture, the Sub-Committee, its delegations and their staff are required to maintain confidentiality during and after their terms of office.

Article 15

- 1) The Committee against Torture shall examine the reports and recommendations, which may be submitted to it by the Sub-Committee. It shall keep them confidential as long as no public statement in accordance with article 14, paragraph 2 has been made or as long as they have not become public in accordance with article 14, paragraph 3 of this Protocol.
- 2) Subject to the rules of confidentiality, the Sub-Committee shall every year submit a general annual report on its activities to the Committee against Torture which shall include information on the activities under this Protocol in its annual report to the General Assembly of the United Nations in accordance with article 24 of the Convention.

Article 16

- 1) The expenditures incurred by the implementation of the present Protocol, including all its missions, shall be borne by the United Nations.
- 2) States Parties shall contribute to the expenditure incurred in the implementation of the present Protocol on the basis of the scale used by the United Nations Organisation
- 3) There may be established a Special Fund based on voluntary contributions of States, inter-governmental organisations, non-governmental organisations, private institutions and individuals.

- 4) The Special Fund shall supplement the financing by the States Parties of all the activities provided for in this Protocol. It shall be managed by the Sub-Committee, which shall report to a Board of Trustees appointed by the States Parties.
- 5) Any expenses, such as the cost of staff, interpreters and facilities, incurred by the United Nations pursuant to article 7, paragraph 4 shall be reimbursed by contributions of the States Parties and the Special Fund.

4. Inter-american Commission on Human Rights (Statute of the Inter-american commission on Human Rights, 1979)³⁸

Article 18

The Commission shall have the following powers with respect to the member states of the Organization of American States

(...)

- g. to conduct on-site observations in a state, with the consent or at the invitation of the government in question; and (...)

³⁸ Approved by Resolution N° 447 taken by the General Assembly of the OAS at its ninth regular session, held in La Paz, Bolivia, October 1979