



Awareness Raising and Training Measures for the Istanbul Protocol in Europe

International and regional bodies

Catholic University Leuven

This work is licensed under a

[Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Unported License](https://creativecommons.org/licenses/by-nc-nd/3.0/).



This project has been funded with support from the European Commission. This communication reflects the views only of the author(s), and the Commission cannot be held responsible for any use which may be made of the information contained therein.



Education and Culture DG

Lifelong Learning Programme

TABLE OF CONTENT

1.	Introduction.....	7
2.	UN Bodies and Other International Bodies	8
2.1	Treaty Bodies.....	8
2.1.1	<i>Committee Against Torture</i>	<i>8</i>
2.1.2	<i>UN Subcommittee on the Prevention of Torture.....</i>	<i>10</i>
2.1.3	<i>Human Rights Committee</i>	<i>11</i>
2.1.4	<i>Other Treaty-based Bodies</i>	<i>14</i>
2.2	Charter-based Bodies.....	14
2.2.1	<i>United Nations Human Rights Council.....</i>	<i>14</i>
2.2.2	<i>United Nations Special Rapporteur on Torture</i>	<i>16</i>
2.2.3	<i>United Nations Special Rapporteur on Violence against Women</i>	<i>17</i>
2.2.4	<i>Working Group on Arbitrary Detention</i>	<i>18</i>
2.2.5	<i>United Nations Voluntary Fund for Victims of Torture.....</i>	<i>18</i>
2.3	International Criminal Court	19
3.	Regional Bodies	20
3.1	Europe	20
3.1.1	<i>European Court of Human Rights</i>	<i>20</i>
3.1.2	<i>European Committee for the Prevention of Torture</i>	<i>21</i>
3.2	Africa	22
3.2.1	<i>African Commission on Human and Peoples' Rights.....</i>	<i>22</i>
3.2.2	<i>African Court on Human and Peoples' Rights.....</i>	<i>23</i>
3.2.3	<i>Committee for the Prevention of Torture in Africa.....</i>	<i>24</i>
3.2.4	<i>Special Rapporteur on Prisons and Conditions of Detention in Africa.....</i>	<i>25</i>

3.3	Americas	25
3.3.1	<i>Inter-American Commission on Human Rights</i>	25
3.3.2	<i>Inter-American Court on Human Rights</i>	26
3.3.3	<i>Special Rapporteur on the Rights of Persons Deprived of their Liberty in the Americas</i>	27
4.	National institutions	28
4.1	National Human Rights Institutions	28
4.2	National Preventive Mechanisms	30
5.	Literature	32

1. Introduction

Although, as can be seen in chapter 3, there are numerous legally binding treaties and conventions in place which have been signed by a vast majority of states, there is still a gap between this official commitment and the legal ban on torture. In many countries, even when part to one or more of the mentioned conventions, torture or other forms of ill-treatment may still be found. This raises questions as to the effectiveness and factual implementation of the international regimes.

Before criticising these efforts one has to acknowledge that the internationalisation of law could only be brought forward by leaving the single states most of their sovereignty. A good example for this is the foundation of the United Nations, whereby the member states on the one hand are obliged to certain (legal) rules, on the other hand did not want to give up their national self-determination and sovereignty. Whereas in national states themselves, law-enforcement bodies, like the police, would watch to secure behavior conformant to the law and to bring perpetrators before court in case of a breach of law, there is no comparable mechanism at the international level. Thus, unlike within a national state, in the field of international human rights quite often states or at least government bodies may be perpetrators and those responsible for enforcing international conventions and obligations at the same time.

This notwithstanding, the UN, as well as other international organisations for the protection of human rights, have installed several mechanisms and bodies for the monitoring and implementation of its conventions. Although they do not have a force comparable to those of national law enforcement and judicial bodies, they put at least a moral pressure on the states that have been found guilty of not abiding to the conventions they have signed and ratified. Exceptions to this are of course the International Criminal Court, who can sentence perpetrators to imprisonment, as well as the European Court of Human Rights, whose decisions are regarded as legally binding, even if the convicted member state does not consent to the judgment.

There is a distinction to be made in the UN system between “treaty-based bodies” and “charter-based bodies”. Whereas the latter derive directly from the UN Charter and are thus relevant for each and every member of the UN, the former are established by different conventions and treaties, and this only apply to their signatories. As such, the treaty-based bodies may only consider human rights violations that allegedly have taken place in one of

the state parties to those treaties.

In this chapter we will take a look at several institutions and bodies which play a role in tackling torture. Firstly, we will focus on International treaty-based bodies like the Committee against Torture, the UN Subcommittee in the Prevention of Torture, or the Human Rights Committee, as well as international charter-based bodies like the UN Human Rights Council, the UN Special Rapporteurs on Torture and on Violence against Women, the Working Group on Arbitrary Detention as well as the UN Voluntary Trust Fund and the ICC. Thirdly, this chapter will focus on several regional bodies. In the last part, national institutions will be discussed.

By explaining these different bodies and mechanisms the following chapter thereby follows very closely the remarks made in the first chapter of the Istanbul Protocol, namely paragraphs 11-47. However, it provides some more detail as well as it enumerates a slightly greater variety of mechanisms. This is due on the one hand to a changed political landscape with some new means for the fight against torture that have evolved recently. On the other hand the provision of more details is also meant as allowing for a better understanding of the scope and the limits of these bodies and mechanisms. A further reason for elaborating a bit more on these crucial elements in the fight against torture is that indeed by the legal documentation of alleged cases of torture according to the standards set forth in the Istanbul Protocol, some of the bodies and mechanisms explained in this chapter might offer a way to legal remedies.


2. UN Bodies and Other International Bodies

2.1 Treaty Bodies

2.1.1 *Committee Against Torture*

The Committee Against Torture (hereinafter CAT or Committee) is established by the UN Convention against Torture and other cruel, inhuman or degrading treatment or punishment adopted in 1984 (hereinafter UNCAT or Convention) for the purpose of monitoring its implementation and receiving information about and investigating into alleged incidents of torture or ill-treatment.

CAT is an independent and international body, composed of 10 independent experts, who are persons of high moral character and recognised competence in the field of human rights. The members of the Committee are elected by the State parties to the UNCAT. The Committee may execute its tasks in co-operation with state parties to the UNCAT only.

 See also art. 17 UNCAT at <http://www2.ohchr.org/english/law/cat.htm>

The specific range of duties of the CAT is determined in articles 19 – 22 of the Convention against Torture and consists of the following tasks:

Firstly, the CAT **receives reports of the State Parties** on the measures they have taken to give effect to their undertakings under this Convention. Each State Party is obliged to submit a report within the first year after the Convention's entry into force in that state. After that, every four years State Parties have to submit a supplementary report informing about new measures taken. These reports are distributed to all State Parties to the Convention. Moreover the Committee makes observations on these reports and forwards them to the State Party concerned. In this way the CAT establishes the basis for an ongoing dialogue about human rights situations in all Member States. The effectiveness of that measure is highly dependent on the States Parties willingness to participate.

Secondly, the CAT is also competent to **receive information from other sources**, such as Non-Governmental Organisations (NGOs). If this information appears reliable and contains well-founded indications that torture is being systematically practiced in the territory of a State Party, the Committee is authorised to conduct an examination of this assertion, but "shall invite" the State Party in question to co-operate. After the State Party had opportunity to respond to the allegations, and if it seems warranted, some members of the Committee may conduct a confidential inquiry. This inquiry may include field missions to the territory of the state, given the approval of the State Party in involved. After closing the examination, a report, including comments and suggestions where appropriate, is submitted to the State Party. As becomes clear in every paragraph of the according article 20 of the Convention, the whole procedure is subject to confidentiality and "at all stages of the procedure the co-operation of the State Party shall be sought." A thorough and effective documentation of evidence of torture is necessary, because

A third situation in which the CAT can act out its duties is when a State Party claims that another State Party is not fulfilling its obligations under this Convention. However, this so-called **inter-state complaint** is subject to an explicit declaration of the State Party that it acknowledges the competence of the CAT in this regard. This acknowledgement can be withdrawn at any time. If a state complaint is filed, this triggers an escalating mechanism: first the State Parties are invoked to settle the matter themselves by means of written communications. If a solution could not be reached, then a "friendly solution" is sought with the help of the Commission. If this also fails, the last thing the CAT may do is to provide a written report about its findings regarding the matter in question to both State Parties. So far no state complaint has ever been filed.

The last major task of the CAT concerns **individual complaints**. When an

individual who is subject to the jurisdiction of a State Party in the UNCAT claims to be the victim of a violation of the provisions of this Convention by that State Party, it may call on the Commission directly. Besides the individual itself, a third party (like an NGO) may also call on the Commission on behalf of a victim of torture or ill-treatment. As a first step the Committee shall inform the State Party concerned about the information received. It is then up to the receiving State to submit to the Committee, within six months, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State. In any case the Committee is authorised to receive information from different sides and will eventually forward its views to the State Party concerned and to the individual. This communication is drawn up like a legal judgment to emphasise its authority and high moral impact, but there is no enforcing body if the Commission retains the view that the State Party has indeed violated the obligations under UNCAT and the suggested remedies are deemed insufficient. Moreover the individual complaint is subject to several restrictions:

- The complaint must not be anonymous, and must be compatible with the provisions of the UNCAT.
- The case in question must not have been examined by another international examination.

All national remedies available must have been exhausted; albeit “formal” remedies that do not show any practical effect (e. g. because remedies are unreasonably prolonged or deemed to be ineffective) are not counted by the Commission.

2.1.2 UN Subcommittee on the Prevention of Torture


The UN Subcommittee on the Prevention of Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (hereinafter SPT or Subcommittee) is established by the Optional Protocol to the Convention Against Torture (hereinafter OPCAT or Protocol), which was adopted on the 18th of December 2002. The SPT, composed of 25 independent and impartial experts, has a purely **preventive mandate** and both an operational and advisory function. As laid down in Article 1 of the OPCAT, the objective of the Subcommittee, together with the so-called National Preventive Mechanisms (NPMs), is to regularly visit places of detention in State Parties “in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.” Moreover the Subcommittee advises State Parties in regard to the establishment of the aforementioned National Preventive Mechanisms. The Subcommittee thus focuses on an innovative, sustained and proactive approach to the prevention of torture and ill treatment.


Members to the Subcommittee have a high moral character as well as prov-

Fact Sheet 17 about the UNCAT. Besides further information this paper also contains a model communication that can be used for an individual complaint.


See also:

www2.ohchr.org/english/bodies/cat/index.htm

 *You may also have a look through Part II (articles 19 – 22) of the UNCAT*

 *Further information may also be found on the website of the IRCT:*

www.irt.org/what-is-torture/convention-against-torture.aspx

 *Further information on the election procedure can be*

en professional experience “in the field of the administration of justice” or “in the various fields relevant to the treatment of persons deprived of their liberty” (Art. 5 §2 OPCAT).

According to Article 11 OPCAT, the **advisory function** of the Subcommittee consists of providing assistance and advice to State Parties regarding the OPCAT in general and, more specifically, the establishment of NPMs. Furthermore, the Subcommittee maintains contact with the NPMs and provides training measures to assist them in reinforcing their power, independence and capacities to fulfill their objectives. To strengthen their standing within State Parties the Subcommittee may also provide recommendations and observations to these State Parties concerning the NPMs and their mandate.


The **operational function** of the Subcommittee, as laid down in Articles 11 to 16, consists of regularly visiting places of detention in all States Parties by at least two members of the Subcommittee. If necessary, these might be accompanied by experts of demonstrated professional experience and knowledge in the field of monitoring human rights violations. While carrying out this function, State Parties must grant the SPT unrestricted access to all places of detention, their installations and facilities (e.g. police stations, prisons, detention centers, mental health and social care institutions, etc.) and to all relevant information. Furthermore the State Parties to the OPCAT must allow the Subcommittee to have private interviews with persons deprived of their liberty and to any other person who, in their view, may supply relevant information.

While visiting a place of detention, the SPT examines conditions of individuals’ daily lives, legislative and institutional frameworks and other areas that may be related to the prevention of torture and ill-treatment. After its visit, the Subcommittee draws up a report containing recommendations and observations. If necessary, this report can be sent to the National Preventative Mechanism of the State Party concerned. State Parties are encouraged to publish the reports of the SPT, but are not bound to do so. Only if State Parties fail to cooperate with the Subcommittee or obviously show no inclination in following its recommendations, the Subcommittee may choose to publish a report without the consent (but after a hearing of) the State Party concerned (Art. 16).


2.1.3 Human Rights Committee

The Human Rights Committee (hereinafter HRC or the Committee) is established by the International Covenant on Civil and Political Rights (hereinafter ICCPR or Covenant) adopted on the 16th of December 1966. It is a body of independent experts that monitors the implementation of the above men-

found in art. 5-10 OPCAT.

 Have a look at the text of the OPCAT.

www2.ohchr.org/english/law/cat-one.htm.

 Further information can be obtained from the Office of the High Commissioner of Human Rights:

www2.ohchr.org/english/bodies/cat/opcat/index.htm


tioned Covenant by its State Parties.

The independent experts composing the Committee are elected nationals of the States Parties to the ICCPR and are persons of high moral character and recognised competence in the field of human rights. Also persons with useful legal experience are seated in the Committee.


Four main tasks are assigned to the HRC which are also broadly similar to those tasks assigned to the CAT, only with a broader scope on ensuring the implementation of all Human Rights as is clear from the content of the establishing Treaty:

First of all, according to Art. 40 of the ICCPR, State Parties have to submit reports informing the Committee on the measures they have undertaken to safeguard the rights recognised in the ICCPR. As with the Committee against Torture, the **initial report** is due within one year after a State Party signed the Covenant. After that, subsequent reports, also known as “periodic reports” have to be submitted. The time frame for these **periodic reports** is at the discretion of the HRC, but typically lies within four to five years. In exceptional circumstances, for example if the human rights situation in a country is worsening, the Committee may ask for additional reports before the time scheduled for the next periodic report. In compiling the report *“it is of critical importance that States ensure that they describe the factual situation, or, in other words, the practical realities regarding the implementation and enjoyment of Covenant rights, rather than limiting themselves to a description of the formal situation as represented in the State’s laws and policies.”* ((1), p.74) Civil society organisations like NGOs may also contribute to the State reports either by working directly with the state authorities or – especially in case of disagreement - by filing an alternate “shadow report”. Based on these reports the Committee starts a dialogue with the state in question to resolve any open issues. After conclusion of the dialogue the HRC formulates its concluding observations which also contain concrete recommendations to the State Party on how to improve the Human Rights situation. All official State reports as well as the concluding observations are published on the website of the UN High Commissioner for Human Rights.

The second task of the Committee, deriving from Art. 40, § 4 ICCPR, is to **assist State Parties to give effect to the provisions** of the Covenant. This is done by elaborating so-called General Comments, which provide greater detail regarding the substantive and procedural obligations of States Parties under the Covenant. Rather than dealing with a particular issue as it arises in the context of a particular state party’s situation, general comments analyse a specific article or general issue in the Covenant in an extended and comprehensive fashion. Whereas at first these General Comments have been rather short, they now read as general statements of law that express the Committee’s conceptual understanding of the content of a particular

 The reports and concluding observations are published on the UN website:

www.unhchr.ch/tbs/doc.nsf

 The general comments are also published on the UN website:


provision, and as such are a very useful guide to the normative substance of international human rights obligations.

www.unhcr.ch/tbs/doc.nsf

A third task of the HRC arises from the right of State Parties to the ICCPR to transfer a complaint to the Committee that one of the State Parties isn't fulfilling its obligations under the Covenant (Art. 41). This so-called **inter-state complaint** is in fact almost identical to the provisions of Art. 21 of the Convention against Torture. It follows the same procedures and underlies the same restrictions, including the necessary express consent of State Parties to acknowledge the HRC's competence in this regard. The State Party claiming that another State Party isn't giving effect to the provisions of the ICCPR should bring this matter to the attention of the latter. When no amicable solution between these states could be reached, the HRC "*shall make available its good offices to the States parties concerned with a view to a friendly solution of the matter*". (Art. 41(e)) If this also fails, the last thing the HRC may do is provide a written report about its findings regarding the matter in question to both State Parties. As with the Committee against Torture, no inter-state complaint has been addressed to the HRC so far.

The fourth and last major task of the HRC concerns **individual complaints**. This procedure is very similar to the procedure of the CAT. One difference may seem that for the Convention against Torture the individual complaints mechanism is more of an integral part, whereas in the case of the ICCPR the first optional protocol has to be signed and ratified by a State Party prior to acknowledge the HRC's competence in this regard, although in the case of the Convention against Torture express consent of the State Parties is necessary as well. The individual complaint mechanism allows individuals who are subject to the jurisdiction of a State Party in the ICCPR and who claim that their rights and freedoms under this Covenant have been violated by that State Party to directly call on the Commission (Art. 41). A more substantial difference to the provisions of the (later adopted) CAT is that the ICCPR does not provide for third party complaints on behalf of another individual and that it only acknowledges "written information" whereas the Convention against Torture speaks solely of "information" that is made available to the Committee.

If a complaint has been filed and is found admissible, the Committee shall inform the State Party concerned about the information received. It is then up to the receiving State to submit to the Committee, within six months, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State. In any case the Committee is authorised to forward its views to the State Party concerned and to the individual. As is the case for the procedure of the UNCAT, the communication in this procedure is drawn up like a legal judgment to emphasise its authority and high moral impact, but there is no enforcing body if the Committee retains

 Also see the ICCPR, Part IV and the first Optional Protocol to it.

the view that the State Party has indeed violated the obligations under the Covenant and the suggested remedies are deemed insufficient. Moreover the individual complaint is subject to several restrictions similar to those in the procedure of the CAT:

- The complaint must not be anonymous, and must be compatible with the provisions of the ICCPR.
- The case in question must not have been examined by another international examination.

All national remedies available must have been exhausted, except where remedies are unreasonably prolonged. (The deeming of remedies to be ineffective is not listed as an exception in the Optional Protocol to the ICCPR – in contrast to the provisions of the Convention against Torture).


2.1.4 Other Treaty-based Bodies


As has been noted in chapter 3 of this training series, the Convention on the Rights of the Child (hereinafter referred to as CRC) and the Convention on the Rights of Persons with Disabilities (hereinafter CRPD) also contain provisions regarding the ban on torture and the right of the respective groups of persons to be free from torture and any other forms of ill-treatment. Likewise these two conventions have their own treaty-based bodies to monitor the implementation of the specific provisions set forth in the text of the Convention, namely the **Committee on the Rights of the Child** and the **Committee on the Rights of Persons with Disabilities**. The composition as well as the tasks of these Committees is very similar to those of the CAT and the HRC. Whereas the CRPD already comprises an optional protocol that allows for an individual complaint, an analogue (third) optional protocol to the CRC has just been approved (on Dec. 19, 2011) by the UN General Assembly and is open for signature since 2012. It will enter into force upon ratification by at least ten State Parties. In the meantime, violations of child rights may be raised before other committees with competence to consider individual complaints.


2.2 Charter-based Bodies


2.2.1 Human Rights Council

When the United Nations was founded in 1945, its main aims were stated in the UN Charter. One of these aims, besides international peace and security, was to promote and encourage respect for human rights and fundamental freedoms for all. Therefore, in 1946 the Commission on Human Rights was established which developed the Universal Declaration of Human Rights. In 2006, the Commission on Human Rights, which had acted for sixty

 For more in-depth knowledge about the HRC you may also consider reading the UN Fact Sheet no. 15 (1).

 Further information can be obtained from the Office of the High Commissioner of Human Rights:
www2.ohchr.org/english/bodies/hrc/index.htm.

 For further information on the Committee on the Rights of the Child, look at:
www2.ohchr.org/english/bodies/crc/

 For further information on the Committee on the Rights of Persons with Disabilities, look at:
www.ohchr.org/en/hrbodies/crpd/pages/crpdindex.aspx

years as the main political human rights body of the United Nations responsible for standard setting, global monitoring and assistance to States, was replaced by the Human Rights Council (hereinafter Council). The Council was established by the UN General Assembly by adoption of resolution A/RES/60/251 (hereinafter Resolution) in 2006 and is based in Geneva.

The main purpose of the Council, as stated in art. 2-5 of the resolution is to address situations of human rights violations in all Member States and provide recommendations to them. During its 5th regular session in June 2007, the Council established several procedures and mechanisms to achieve this goal; these can be found in its resolution 5/1:

Firstly, in Art. 1-38 the Council provides a **Universal Periodic Review** mechanism (UPR) to assess the human rights situation in all Member States once every four years in order to improve the human rights' situation on the ground, to assist the States in fulfilling their human rights obligations, and to share best practices amongst States and other stakeholders. The review is based on documents provided by the State concerned, on documents already compiled by the UN (e. g. by the above mentioned treaty bodies), and on documents submitted by "*other relevant stakeholders*", i.e. non-governmental sources. The Council prepares and adopts a report, comprising a summary of the proceedings as well as conclusions and recommendations.

Secondly, with Art. 39-64 the Council mandates so-called **Special Procedures**, i.e. mechanisms that monitor human rights violations in specific countries, or that address specific thematic issues. These Special Procedures' mandates are carried out either by individuals who are leading experts in a particular area of human rights ("Special Rapporteur" or "Independent Expert") or by working groups consisting of five members. The functions of the Special Procedures entail receiving information on specific allegations of human rights violations and sending urgent appeals or letters of allegation to governments asking for clarification; conducting studies; and undertaking fact-finding missions. The Special Rapporteurs on Torture and on Violence against Woman, and Working Group on Arbitrary Detention described in this sub-chapter are all part of the Special Procedures.'

Thirdly, the Council created the **Human Rights Council Advisory Committee** (hereinafter Advisory Committee) existing of 18 experts, functioning as a think-tank for the Council and working at its direction. The Advisory Committee provides expertise to the UNHRC focusing mainly on studies and research-based advice. It is implementation-oriented and sticks to thematic issues related to the mandate of the Council (Art. 65-84).

Last but not least, with Art. 85-109 of its resolution 5/1 of 2007 the Council provides for **complaint procedures** to address consistent patterns of gross

✓ Do not confuse the Human Rights **Council** with the Human Rights **Committee**!

and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances. Complaints (so-called “communications”) may be filed by individuals or groups who claim to be victims of a violation of their human rights or fundamental freedoms, but also by third parties who claim to have reliable knowledge about such violations. The criteria for admissibility of a communication are largely the same as for individual complaints to the treaty-based bodies described above. Two working groups are established to examine the communications and to bring the above mentioned patterns to the Council’s attention, namely the Working Group on communications and the Working Group on situations. Whereas the first one screens all incoming communications according to the admissibility criteria, the latter one will present a report of all communications found admissible to the Council as well as prepare draft resolutions and decisions and make recommendations on the further course of action.


2.2.2 United Nations Special Rapporteur on Torture


By resolution 1985/33 the former UN Commission on Human Rights created the mandate of the UN Special Rapporteur on Torture; the mandate was extended by Human Rights Council Resolution 16/23 in April 2011 for another three years. The Special Rapporteur on Torture is one of the Special Procedures mentioned in sub-chapter 2.2.1 above and is based upon the UN Charter, not on one of the treaties. Therefore the Special Rapporteur on Torture covers all countries, irrespective of whether a State has ratified the UN Convention against Torture or not.

In his report from 1997 (E/CN.4/1997/7) the Special Rapporteur on Torture defined the mandate and methods of work for his role. According to Art. 2 of these “Methods of Work” the mandate of the Special Rapporteur contains the following main tasks:

In the first place, the Special Rapporteur **seeks and receives credible and reliable information on torture and other forms of ill-treatment** from governments, specialised agencies, intergovernmental and non-governmental organisations.

Secondly, the Special Rapporteur sends **urgent appeals to governments** to clarify the situation of individuals whose circumstances give grounds to fear that they might be tortured or ill-treated. In carrying out this task, the Special Rapporteur is authorised to receive communications about alleged cases of torture and to transfer these appeals to the States concerned. Starting up this dialogue does not necessarily imply any accusation by the Special Rapporteur. It may also be interpreted as a request to clarify the matter and thus is essentially preventive in nature and purpose.

 If you are further interested in the work of the Human Rights Council, read *A/HRC/RES/5/1*.

 Further information can be obtained from the Office of the High Commissioner of Human Rights:
www2.ohchr.org/english/bodies/hrcouncil/

A third task of the Special Rapporteur consists of **transmitting allegation letters**, i.e. communications on past alleged cases of torture to governments, indicating that acts falling within his/her mandate may have occurred and requesting clarifications on these cases.

Most importantly, the Special Rapporteur is also authorised to carry out **country visits** at the invitation of governments. During these fact-finding missions, the Special Rapporteur conducts unannounced visits to places of detention and later issues a public report on his/her findings, including recommendations to the country in question.

Finally, the Special Rapporteur submits **annual reports** on his/her activities to the Human Rights Council and the General Assembly. In his/her work the Special Rapporteur should collaborate closely with other UN human rights bodies to avoid duplication of activities, or to conduct country visits and file urgent appeals jointly with other special rapporteurs, independent experts and working groups where this is warranted.

2.2.3 *United Nations Special Rapporteur on Violence against Women*

The function of the Special Rapporteur on Violence against Women was created by Resolution 1994/45 of the United Nations Commission on Human Rights adopted in March 1994 and was last renewed in 2011.


The mandate of the Special Rapporteur on Violence against Women is designed very similar to that of the Special Rapporteur on Torture and focuses on both preventing and tackling violence against women. His/her mandate also consists of different tasks as have been set out in Art. 3 of the UNHRC resolution 16/7 of 2011:

A first task consists of **seeking and receiving information** on violence against women, its causes and consequences and to formulate an effective response. To carry out this task, the Special Rapporteur consults “governments, treaty bodies, specialised agencies, other special rapporteurs who are responsible for various human rights questions, intergovernmental and non-governmental organisations, including women's organisations”.

Secondly the Special Rapporteur provides recommendations on “measures, ways and means at the local, national, regional and international levels to eliminate all forms of violence against women and its causes, and to remedy its consequences.”

Moreover the Special Rapporteur is urged “to adopt a **comprehensive and universal approach** to the elimination of violence against women, its causes and consequences, including causes of violence against women relating to the civil, cultural, economic, political and social spheres”.

To carry out his/her mandate the Special Rapporteur on Violence against

 Further information can be obtained from the Office of the High Commissioner of Human Rights:
<http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx>

Women is authorised to conduct **country visits** or to **file urgent appeals** in the same way as the Special Rapporteur on Torture. These actions may be taken either separately or jointly with other special rapporteurs, independent experts and working groups. Especially if violence against women amounts to torture or ill-treatment, cooperation with the Special Rapporteur on Torture (and other UN mechanisms) might be sought. The Special Rapporteur on Violence against Women **reports annually** to the Human Rights Council and the General Assembly.

2.2.4 Working Group on Arbitrary Detention


The Working Group on Arbitrary Detention (hereinafter Working Group) is another Special Procedure of the UNHRC; it was established by Resolution 1991/42 of the former Commission on Human Rights. The Working Group is a body of independent human rights experts investigating cases of arbitrary arrest and detention that may be in violation of international human rights law. In relation to the problem of torture it is of special importance since most cases of torture or ill-treatment occur while in detention. Arbitrary detention therefore raises the chance for victims to be subjected to torture and thus special attention has to be paid to those cases and circumstances.

The Working Group's mandate is basically the same as those of the Special Rapporteurs with the tasks of **receiving information, conducting country visits** with the consent of the State concerned, **filing urgent appeals** and **reporting annually** to the Human Rights Council and the General Assembly.


2.2.5 United Nations Voluntary Fund for Victims of Torture

The UN Voluntary Fund for Victims of Torture (hereinafter Fund) was established by a General Assembly resolution (Resolution 36/151) adopted in 1981. This Resolution established a fund that receives voluntary contributions from governments, NGOs and individuals for distribution exclusively to NGOs providing humanitarian assistance (either psychological, medical, social, legal and/or economic) to victims of torture and members of their family. Subject to the availability of financial means, a limited number of grants may also be distributed for the training of professionals or the organisation of conferences and seminars with a specific focus on the treatment of victims of torture. Regarding legal assistance, funds are also available for supporting torture victims seeking asylum, e. g. by providing legal advice in the preparation and follow-up of asylum applications in a host country. The Fund also contributes to combating impunity where grants are used to provide reparation and compensation for victims through claims before competent national, regional and international bodies.


Over the past few years, the Fund's Board of Trustees has received an average of US\$14 million in funding requests per year and has awarded about

 Further information can be obtained from the Office of the High Commissioner of Human Rights:

<http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx>

 Further information can be obtained from the Office of the High Commissioner of Human Rights:

<http://www.ohchr.org/EN/Issues/Detention/Pages/WGADIndex.aspx>

 For more information on the voluntary fund see the webpage:

<http://www.ohchr.org/EN/Issues/Pages/TortureFundMain.aspx>

US\$9 million in grants on an annual basis to support about 190 projects in more than 60 countries. One of the projects supported by the Fund was the development and translation of the Istanbul Protocol.

2.3 International Criminal Court

The Rome Statute, adopted in 1998, founded the International Criminal Court (hereinafter ICC or Court). The Court is independent from the UN, although it has been modeled after previous UN ad hoc tribunals, for example for Rwanda or the former Yugoslavia.

As an institution for prosecuting the most serious crimes, the ICC is the first permanent, treaty based, and international criminal court. It was established to **help end impunity for the perpetrators of the most serious crimes of concern to the international community**. To this end not even former State presidents can claim immunity before the court. The Court has jurisdiction over the following serious crimes:


- Crime of genocide;
- Crimes against humanity;
- War crimes; and
- Crime of aggression.

The Court is authorised to deal with crimes committed after the entry into force of the Rome Statute (on the 1st of July 2002) and only if the State Party concerned is either unwilling or unable to conduct a criminal prosecution itself.

- In dealing with the crimes mentioned the Court applies:
- In the first place the Rome Statute;
- In the second place, if appropriate, applicable treaties and the principles and rules of international law;

Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognised norms and standards.

and the leaflet about the Fund.

 For more information see:

<http://www.icc-cpi.int/Menus/ICC/Home>

3. Regional Bodies

3.1 Europe

3.1.1 *European Court of Human Rights*

The European Court of Human Rights (hereinafter referred to as Court or ECtHR) was established by the European Convention on Human Rights (hereinafter Convention or ECHR) adopted in 1950. According to Art. 19 of this Convention it is a permanent institution which ensures the observance of the obligations undertaken by the Contracting Parties to the Convention and its additional Protocols (including the prohibition of Torture set down in article 3 of the Convention).

In carrying out its mandate the Court is authorised to deal with inter-State cases as well as individual complaints, similarly to those of certain UN mechanisms, namely the CAT and the HRC. The ECHR and the ECtHR were established prior to these UN mechanisms and thus were the first to strengthen the position of the individual in international law. Different than the “advisory”-character of the findings of the CAT and the HRC, the judgments of the ECtHR are legally binding and States concerned are obliged to implement them.

Inter-State cases encompass alleged breaches of the provisions of the Convention and the protocols thereto by a State Party and are referred to the Court by another Member State (Art. 33 ECHR). This possibility is used rarely; however, unlike within the UN system there are a number of important inter-State judgments.

Again similar to the CAT and the HRC, the Court ‘can only deal with **individual applications** after all domestic remedies have been exhausted’ and only ‘within a period of six months from the date on which this final decision was taken’. These and more admissibility criteria for individual applications are listed in article 35 of the Convention. According to that article, applications must not be anonymous and the case must not have been examined by another international institution. The decision of admissibility of an application is taken by a single judge or a committee. In well-established cases the committee may also make a final decision in that case. However, if there is no agreement about admissibility or no decision by the committee, the application will be forwarded to the Chamber (Art. 27-30).

While examining the case together with the representatives of the Parties concerned, according to Art. 38 the Court can decide to undertake an investigation if necessary. Eventually the Chamber will deliver a judgment, which

could be appealed against at the Grand Chamber of the Court. However, in three cases the judgment of the Chamber is final, namely when:

1. The Parties declare that the case should not be referred to the Grand Chamber;
2. Three months after the date of judgment the case has not been referred to the Grand Chamber;
3. A request for referral of the case has been made in due time, but the referral has been rejected by the panel of the Grand Chamber.

The judgment of the Chamber is not final when a referral to the Grand Chamber has been requested within three months after the date of judgment and the panel has not rejected the request. The judgment of the Grand Chamber is final. The Committee of Ministers of the Council of Europe then receives communications about the final judgment of the Court and is responsible for supervising the implementation of these judgments. This procedure is stated in Art. 42-46 ECHR, the last of which also expresses the binding force of the Court's judgments.


Another important task of the European Court of Human Rights set out in Art. 47, consists in giving '**advisory opinions** on legal questions concerning the interpretation of the Convention and the protocols thereto' at the request of the Committee of Ministers of the Council of Europe.


3.1.2 European Committee for the Prevention of Torture

The European Committee for the Prevention of Torture (hereinafter CPT) was established by the European Convention for the Prevention of Torture adopted in 1987. The CPT '*provides a non-judicial preventive mechanism to protect persons deprived of their liberty against torture and other forms of ill-treatment*' and in this way complements the judicial work of the ECtHR.

The task of the CPT primarily consists in **carrying out visits to places of detention** in the 47 Member States (including prisons, juvenile detention centers, police stations, holding centers for immigration detainees, psychiatric hospitals, social care homes, etc.), in order to assess the treatment of persons deprived of their liberty as well as their conditions of detention. Shortly before carrying out the visit, the CPT informs the Party concerned of its intention to visit the country. After this notification, the CPT is allowed to visit the Party at any time.

Very similarly conceived as the UN Subcommittee on the Prevention of Torture (which is posterior to the CPT), country visits are conducted on a regular basis, usually every four years. If circumstances require, intermediate (so-called ad hoc) visits to a Member State are also possible.

 Have a look at the ECHR, especially at Section II (Art. 19-51) that deals with the ECtHR.

 For more information on the ECtHR, please see: www.echr.coe.int/echr/

To carry out its task, according to Art. 8 of the European Convention for the Prevention of Torture, the CPT:

- Receives access to the Party's territory and has the right to travel without restriction;
- Receives full information on the places where persons deprived of their liberty are being held;
- Has unlimited access to these places and has the right to move inside such places without restriction;
- Receives other information available to the Party which is necessary for the Committee to carry out its task (in regard to applicable rules of national law and professional ethics);
- May interview in private persons deprived of their liberty;
- May communicate freely with any person whom it believes can supply relevant information; and
- May, if necessary, immediately communicate observations to the competent authorities of the Party concerned.


After its visit, the CPT draws up a report comprising facts found during the visit as well as recommendations. The report is transferred to the Party concerned. The Committee can provide suggestions to the Party concerned on how to improve the protection from ill-treatment of persons deprived from their liberty (Art. 10).


3.2 Africa

Besides European bodies established to fight torture and other forms of cruel, inhuman or degrading treatment or punishment, other regions also have established specific bodies in their fight against these crimes. Although they are of high importance in the overall fight against torture and, thus, may not be forgotten, we will only provide a general overview of the most important bodies in Africa and the Americas because of the fact that the ART-IP project's main focus lies on Europe.

3.2.1 African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights (hereinafter Commission) was established within the Organisation of African Unity (the predecessor of the African Union; hereinafter referred to as OAU) by the African Charter on Human and Peoples' Rights also known as Banjul Charter (hereinafter referred to as Charter) which was adopted in 1981. Its mandate

 Have a look at the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Chapters I – III, Art. 1 – 14.*

 See also: www.cpt.coe.int/en/about.htm

is set forth in Art. 30 of the Charter and consists of the promotion of human and peoples' rights and ensuring their protection in Africa.

The Commission's mandate is two-fold, comprising both promotional and protection-related activities. With respect to the promotion of human and peoples' rights, the commission has adopted numerous declarations, guidelines, organised seminars and has conducted promotional visits to Member States to raise awareness of specific human rights issues. With regard to its protection mandate, the Commission is tasked to **deal with complaints of violations of the Charter**. These inter-state complaints are considered admissible, when all local remedies, if they exist, have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged (Art. 47-50). While the Commission's decisions on individual cases have no binding force on Member States, its growing "jurisprudence" has significantly contributed to the development of human rights concepts in certain areas. For example, the African Charter contains the concept of "group rights" and the Commission has in several cases strengthened the position of local communities or tribes in their claim for access to land, natural resources and enjoyment of a healthy and sustainable environment.


Besides these tasks carried out by the Commission in order to specifically promote and protect human and peoples' rights, the African Commission is charged with the interpretation of all the provisions of the Charter at the request of a State Party, an institution of the OAU or an African Organisation recognised by the OAU, as is laid down in Art. 45.3.


3.2.2 African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights (hereinafter Court) was established by the adoption of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as Protocol) in 1998. This Protocol establishes a court that complements the protective mandate of the African Commission (Art. 1-2).

The Court is mandated to **take final and binding decisions on human rights violations** in 'all cases and disputes submitted to it concerning the interpretation and application of the African Charter, the Protocol and any other relevant human rights instrument ratified by the States concerned' (Art. 3.1). According to the protocol's fifth article, Cases can be submitted by:

- The African Commission on Human and Peoples' Rights;
- The State Party which has submitted a complaint to the Commission;
- The State Party against which the complaint has been submitted at the

 Take a look at the Banjul Charter, Art. 46-59 if you are interested in more detailed information about the procedure.

 More information can be found on the website of the Commission itself: www.achpr.org

Commission;

- The State Party whose citizen is a victim of human rights violation;
- African Intergovernmental Organisations
- A citizen of a State Party which has made a declaration accepting the standing of individuals before the Court;

Another task of the Court is to provide **advisory opinions** to:

- A Member State of the OAU;
- The OAU;
- Any organ of the OAU; and
- Any African organisation recognised by the OAU.


Opinions can be provided on 'any legal matter relating to the Charter or any other relevant human rights instrument, provided that the subject matter of the opinion is not related to a matter being examined by the Commission' (Art. 4).

3.2.3 *Committee for the Prevention of Torture in Africa*


During its 35th Session held in Banjul, the African Commission adopted the Robben Island Guidelines Committee (RIGC). The RIGC was set up 'to promote and facilitate the implementation of the Robben Island Guidelines (adopted in 2002) and to help the African Commission on Human and Peoples' Rights to deal effectively with the question of torture in Africa'. The name of the Robben Island Guidelines Committee was replaced by 'Committee for the Prevention of Torture in Africa' (hereinafter referred to as CPTA or Committee) at the 46th Session of the African Commission on Human and Peoples' Rights. It was purely a change of name; no changes were made to the mandate of the body.


Nowadays 4 specific tasks are assigned to the CPTA:

1. To organise, with the support of interested partners, **seminars** to disseminate the Robben Island Guidelines to national and regional stakeholders;
2. To **develop and propose** to the African Commission on Human and Peoples' Rights **strategies** to promote and implement the Robben Island Guidelines at the national and regional levels;
3. To **promote and facilitate the implementation** of the Robben Island Guidelines within member states and;

 Also have a look at the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights

 For more information, visit the website: <http://www.african-court.org/en/>

 Take a look at the Robben Island Guidelines. www.achpr.org/instruments/robben-island-guidelines-2008/

 More information can be found at www.apt.ch/index.php?option=com_k2&view=item&id=1123:cpta-introduction&lang=en

4. To **make a progress report** to the African Commission at each ordinary session;

3.2.4 *Special Rapporteur on Prisons and Conditions of Detention in Africa*

The function of a Special Rapporteur on Prisons and Conditions of Detention (hereinafter Special Rapporteur or SRD) was installed by the African Commission on Human and Peoples' Rights in its 20th Session in 1996 to supplement its promotional mandate ('*to promote and protect human rights in state parties to the African Charter on Human and Peoples' Rights*').


It is the task of the SRD to '*examine the situation of persons deprived of their liberty within the territories of States Parties to the African Charter on Human and Peoples' Rights*'. To fulfill this mandate, the Special Rapporteur is authorised to:

- **Examine the state of the prisons and conditions of detention** in Africa and make recommendations with a view to improving them;
- **Advocate adherence to the Charter and international human rights norms and standards** concerning the rights and conditions of persons deprived of their liberty;
- **Examine the relevant national law and regulations** in the respective States Parties as well as their implementation and make appropriate recommendations on their conformity with the African Charter on Human and Peoples' Rights and with international law and standards;
- When requested by the African Commission on Human and Peoples' Rights, **make recommendations** to it as regards communications filed by individuals who have been deprived of their liberty, their families, representatives, by NGOs or other concerned persons or institutions;
- **Propose appropriate urgent action;**
- **Conduct studies** into conditions or situations contributing to human rights violations of prisons deprived of their liberty and recommend preventive measures.

3.3 Americas

3.3.1 *Inter-American Commission on Human Rights*

The Inter-American Commission on Human Rights (hereinafter referred to as Commission or IACHR), was established by the Organisation of American States in 1959 in order to promote and protect human rights in the Ameri-

 You can find more information on the Special Rapporteur's mandate on www.achpr.org/mechanisms/prisons-and-conditions-of-detention/

can hemisphere. With the adoption of the American Convention on Human Rights in 1969, the functions and procedures of the Commission were further defined.

The Commission is authorised to carry out a wide range of tasks according to Art. 41 of the American Convention on Human Rights:


- **Develop an awareness** of human rights among the peoples of America;
- **Make recommendations** to the governments of the Member States, when it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic law and constitutional provisions as well as appropriate measures to further the observance of those rights;
- **Prepare such studies or reports** as it considers advisable in the performance of its duties;
- **Request** the governments of the member states to supply it with **information** on the measures adopted by them in matters of human rights;
- **Respond**, through the General Secretariat of the Organisation of American States, **to inquiries** made by the member states on matters related to human rights and, within the limits of its possibilities, to provide those states with the advisory services they request;
- To **act on petitions and other communications** pursuant to its authority.


The individual complaint procedure mandated to the Committee by article 41 of the American Convention on Human Rights (hereinafter Convention) is one of the most important tasks of the Committee. Article 44 of the Convention states that *'any person or group of persons, or any nongovernmental entity legally recognised in one or more member states of the Organisation, may submit petitions with the Commission containing denunciations or complaints of violation of the Convention by a State Party'*.

3.3.2 Inter-American Court on Human Rights

The American Convention on Human Rights (hereinafter Convention) established the Inter-American Court on Human Rights (hereinafter referred to as Court) in 1969. The Court was officially installed in 1979.

The Court is an autonomous judicial institution with binding jurisdiction over Member States. According to Art. 1 of its statute, the main objective of the Court is to apply and interpret the American Convention on Human Rights. In order to reach this goal, the Court carries out 2 main functions,

 Take a look at the Statute of the Commission for Human Rights and at Art. 34-51 of the American Convention on Human Rights

 More information on the Commission can be found on the following websites:
www.oas.org/en/iachr/mandate/what.asp
and
www.cidh.org/basicos/english/Basic1.%20Intro.htm

which are laid down in Art. 61-64: a judicial function and an advisory function.

The **judicial function** consists of receiving and dealing with cases submitted by either the Inter-American Commission (for more information on the Commission see 3.3.1 above) or by State Parties to the Convention. Submission is only possible when the procedure before the Commission has been exhausted. Therefore, individual complaints can only reach the Court through the Commission.


For its **advisory function**, the Court receives requests for interpretation of the Convention or other treaties concerning the protection of human rights in American States, submitted by any Member State of the Organisation of American States (hereinafter referred to as OAS) or others listed in article 53 of the OAS Charter. Also on request the Court may issue an opinion concerning the compatibility of domestic laws with international human rights instruments.


3.3.3 *Special Rapporteur on the Rights of Persons Deprived of their Liberty in the Americas*

The Inter-American Commission on Human Rights established a working group to examine detention conditions in the Americas, during its 85th and 86th sessions. This working group should be seen as the forerunner of the office of the Special Rapporteur on the Rights of Persons Deprived of their Liberty (hereinafter referred to as Special Rapporteur). In March 2004, the Inter-American Commission formally established the Office of the Rapporteur on the Rights of Persons Deprived of Liberty in the Americas.

The mandate of the Special Rapporteur consists of 'issuing special recommendations to the member States of the OAS in order to move forward with the respect and guarantee of the human rights of the persons deprived of their liberty'. In carrying out its mandate, the Special Rapporteur fulfils a broad range of tasks, including:

- **Remaining informed** about the situation of all types of persons submitted to any form of detention or prison in the Member States, regardless of their age, sex, or condition of incarceration or deprivation of liberty;
- Conducting **visits to OAS Member States** for the purpose of compiling information or asking the State authorities for information concerning all persons deprived of liberty and the conditions in which they are being held;
- **Visiting detention centres** or facilities in which juveniles are held in


 See also Art. 52-69 of the American Convention on Human Rights and the Statute of the Inter-American Court on Human Rights.

 Take a look at the website of the Organisation of American States:

<http://www.cidh.org/basicos/english/Basic1.%20Intro.htm>

custody, even without prior notice to the correctional authorities;

- **Preparing reports** for the Commission on the correctional situation in a particular detention centre or country, or at the regional or sub-regional level, along with any recommendations deemed necessary for the Commission;
- **Issuing recommendations** to the Member States regarding detention or incarceration conditions, and follow up on compliance with the recommendations;
- **Conducting promotional and educational human rights activities** applicable to persons deprived of liberty;
- In serious cases involving people in custody, **promoting action or urging States to meet their international obligations** in this area; and
- **Promoting the adoption of legislative, judicial, administrative, or other types of measures** to guarantee the rights of persons deprived of liberty and their families.

 Check the website of the Organisation of American States for more information: www.oas.org/en/iachr/pdl/default.asp

4. National institutions

4.1 National Human Rights Institutions

National Human Rights Institutions (hereinafter referred to as Institutions or NHRIs) are institutions that are central to national human rights protection systems and are important counterparts for the United Nations Office of the High Commissioner for Human Rights. The NHRIs are set up by local governments and can be regarded *“as key institutions for the promotion and protection of human rights within their countries”*. (2) Meanwhile they are also called a *“cornerstone of national human rights protection systems”* that *“increasingly serve as relay mechanisms between international human rights norms and the State”*. (3)

Since these Institutions are established at the national level by local governments, it is of utmost importance to ensure a certain *“quality standard”*. Therefore the Paris Principles, adopted by GA Resolution 48/134 in 1993, provide minimum standards for the establishment and operation of the NHRIs. Under these principles, NHRIs are required to:

- **Protect human rights**, including by receiving, investigating and resolving complaints, mediating conflicts and monitoring activities; and
- **Promote human rights**, through education, outreach, the media, publications, training and capacity-building, as well as by advising

and assisting Governments.

The Paris Principles set out criteria for the establishment and effective functioning of NHRI:


- Mandate and competence: a broad mandate based on universal human rights standards;
- Autonomy from Government;
- Independence guaranteed by statute or constitution;
- Pluralism, including through membership and/or effective cooperation;
- Adequate resources and powers of investigation;

Nowadays these Paris Principles are used in the accreditation of NHRIs by the UN Sub Committee on Accreditation (hereinafter SCA) of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (hereinafter ICC). This coordinating committee was established at an international conference in 1993 with the aim to coordinate the activities of the NHRI network. Depending upon the status of accreditation, the NHRIs have different access to UN Human Rights bodies and may become key partners to the UN treaty mechanisms. 4 different classifications of accreditation are applied by the ICC:


- A: Compliance with the Paris Principles;
- A(R): Accreditation with reserve - granted where insufficient documentation is submitted to confer A status;
- B: Observer Status - Not fully in compliance with the Paris Principles or insufficient information provided to make a determination; and
- C: Non-compliant with the Paris Principles.

NHRIs have a high number of responsibilities, which are “inter alia” listed in Art. 3 of the Paris Principles and among which are:

- To submit to the Government, Parliament and any other competent body, on an advisory basis, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights;
- To promote and ensure the harmonisation of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
- To encourage ratification of the above-mentioned instruments or ac-

 Have a look at the Paris Principles that could be found under:

www2.ohchr.org/english/law/parisprinciples.htm

 For a further explanation of these classifications see:

<http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Pages/default.aspx>

cession to those instruments, and to ensure their implementation;

- To contribute to the reports which States are required to submit to the United Nations and regional institutions;
- To cooperate with the United Nations and any other organisation in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the area of the promotion and protection of human rights;
- To assist in the formulation of programs for the teaching and research of human rights and to implement trainings in schools, universities and professional circles;
- To sensitise the population about human rights and the need to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Moreover some National Human Rights Institutions may also have quasi-judicial character with regard to the competence to investigate individual complaints about human rights violations.

4.2 National Preventive Mechanisms

With the entry into force of the Optional Protocol to the Convention Against Torture (OPCAT) in 2006, a two-level approach to the prevention of torture was created, based on an international body, the Subcommittee on Prevention of Torture (hereinafter Subcommittee), and national visiting bodies, so-called National Preventive Mechanisms (NPMs). Article 17 of the OPCAT obliges each State Party to *'maintain, designate or establish one or several independent national preventive mechanisms for the prevention of torture at the domestic level'*. The institutional set-up of NPMs is left to the discretion of State Parties, who can either designate an existing body to function as NPM (e.g. an Ombudsinstitution) or create a new institution as NPM. Independent of the specific institutional format, NPMs have to fulfill several criteria set out in Article 18 OPCAT: full personal and functional independence of the NPM; individual members of the NPM must have the necessary capabilities and professional skills relevant to the NPMs mandate; the composition of the NPM must ensure pluralism, strive for a gender balance and reflect and adequate representation of ethnic and minority groups; in addition State Parties must make available the necessary resources to ensure the effective functioning of the mechanism; finally, the OPCAT refers to the Paris Principles as bench mark for the establishment or designation of NPMs. This reference is crucial as it implies inter alia that members of the

Further information can also be obtained from:
www.ohchr.org/en/countries/nhri/pages/nhrimain.aspx
or
<http://nhri.ohchr.org/EN/Pages/default.aspx>

For a comprehensive overview of NHRIs, their function and interplay with UN bodies and Human Rights mechanisms, have a look at Müller / Seidensticker (2) and/or the UN's Professional Training Series No. 4. (3).

executive are excluded from active participation in NPMs. Besides the provisions laid down in several articles of the OPCAT itself, the UN has also published guidelines on NPMs that further clarify “quality” standards and the SPT actively involved in helping Member States in the process of establishing national mechanism.


The mandate of the NPMs is similar to the mandate of the Subcommittee, namely: ‘to conduct regular visits to places of detention as well as to make recommendations and observations to the government and relevant authorities to improve the situation of the persons deprived of their liberty’. According to Art. 19 OPCAT, National Preventive Mechanisms should be authorised, at a minimum, to:


- Regularly **examine the treatment** of the persons deprived of their liberty in places of detention with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- **Make recommendations** to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations; and
- **Submit proposals and observations** concerning existing or draft legislation.

The authorities are also required to enter into a dialogue with the NPM on the measures necessary to implement the recommendations.

In order to carry out its mandate, the NPMs must be provided with the following rights:


- Access to all information concerning the number of persons deprived of their liberty, as well as the number of places of detention and their location;
- Access to all information referring to the treatment of those persons as well as their conditions of detention;
- Access to all places of detention and their installations and facilities;
- The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the NPM believes may supply relevant information;
- The liberty to choose the places they want to visit and the persons they

 See the SPT Guidelines on NPMs to learn more about their establishment and operation

 Please have a look at Section IV, Art. 17-23 of the OPCAT to learn more about NPMs.

want to interview;

- Confidentiality of information collected by the NPM, in particular protection of personal data.
- The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

 Further information can also be obtained from:
www.apt.ch/index.php?option=com_k2&view=item&layout=item&id=678&Itemid=253&language=en

5. Literature

1. United Nations Centre for Human Rights. Human rights fact sheet no. 15. Civil and Political Rights: The Human Rights Committee. Geneva, Switzerland ; New York: Centre for Human Rights.
2. Müller A, Seidensticker FL. The role of national human rights institutions in the United Nations treaty body process. Berlin: Dt. Inst. für Menschenrechte; 2007. 87 p.
3. United Nations High Commissioner for Human Rights. National human rights institutions : history, principles, roles and responsibilities. New York ; Geneva: Office of the United Nations High Commissioner for Human Rights; 2010. Available from: http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf.