Preventing Torture in Africa

Proceedings of a joint APT - ACHPR Workshop, Robben Island, South Africa, 12-14 February 2002

African Commission on Human and Peoples' Rights

Commission Africaine des Droits de l'Homme et des Peuples

AU - UA

apt

About the Association for the Prevention of Torture

Founded in 1977 by Jean-Jacques Gautier and based in Geneva, Switzerland, the Association for the Prevention of Torture (APT) is an independent non-governmental organisation committed to prevent torture and ill-treatment. The APT supports national implementation of international norms and standards that prohibit torture, it contributes to the promotion of control mechanisms such as visits by appropriate experts to places of detention, and it develops information and training activities for authorities in contact with detainees such as the police, the judiciary, parliamentarians and the staff of penitentiary establishments.

At the international level, the APT is at the origin of the Optional Protocol to the UN Convention against Torture, the European Convention for the Prevention of Torture as well as the adoption of Guidelines and Measures for the Prohibition and Prevention of Torture in Africa, the Robben Island Guidelines, by the African Commission on Human and Peoples' Rights.

Association for the Prevention of Torture
P.O Box 2267
CH-1211 Geneva 2
Phone: +41 (0) 22.919.21.70
Fax +41 (0) 22.919.21.80
E-mail: apt@apt.ch - Website: www.apt.ch

About the African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights was established by the African Charter on Human and Peoples' Rights which came into force on 21 October 1986 after its adoption in Nairobi, Kenya, in 1981 by the Assembly of Heads of State and Government of the Organisation of the African Unity (OAU).

Composed of eleven members elected by the Assembly of Heads of State and Government for a six year renewable term, the African Commission on Human and Peoples' Rights is a regional mechanism charged with ensuring the promotion and protection of Human and Peoples' Rights throughout the African Continent.

The African Commission on Human and Peoples' Rights has its headquarters in Banjul, The Gambia.

African Commission on Human and Peoples' Rights
90, Kairaba Avenue
P.O. Box 673
Banjul, The Gambia
Phone: (+ 220) 39 29 62
Fax: (+ 220) 39 07 64
Email: achpr@achpr.org - Website: www.achpr.org

The APT would like to thank the governments of United Kingdom, Canada, Finland and Switzerland for their generous contributions to this publication.

ISBN 29700214-6-3

Imp. abrax F-21300 Chenôve

Preventing Torture in Africa

Proceedings of a joint APT - ACHPR Workshop,
Robben Island, South Africa, 12-14 February 2002

Edited by

Jean Baptiste NIYIZURUGERO

Table of Contents

Abbreviations and acronyms

ACDHRS	African Centre for Democracy and Human Rights Studies
ACHPR	African Commission on Human and Peoples' Rights
ANC	African National Congress
APA	African Penitentiary Association
APT	Association for the Prevention of Torture
Art.	Article
CAT	Committee against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CID	Criminal Investigation Department
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
ECOSOC	Economic and Social Council
ECPT	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
FIDH	International Federation for Human Rights
HRE	Human Rights Education
ICC	International Criminal Court
ICCPR	International Covenant for Civil and Political Rights
ICD	Independent Complaints Directorate
ICERD	International Convention on the Elimination of all forms of Racial Discrimination
ICESCR	International Covenant for Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
IGO	Inter-governmental Organisation
NGO	Non-governmental Organisation
No.	Number
OAU	Organisation of African Unity
Para.	Paragraph
RCMP	Royal Canadian Mounted Police
SAPS	South African Police Services
TRC	Truth and Reconciliation Commission
UDHR	Universal Declaration on Human Rights
UN	United Nations
UN-CAT	United Nations Convention against Torture
WCAR	World Conference Against Racism

Foreword

The Association for the Prevention of Torture (APT) is an independent non-governmental organisation committed to working internationally to tackle the global problem of torture and ill-treatment. It has programmes that cover activities in Africa, the Americas, Europe, Asia and the United Nations. The APT Africa Programme works with African national institutions, inter-governmental mechanisms, as well as African national and regional NGOs, in order to develop local solutions, based on international and regional norms and standards, to prevent torture and ill-treatment in Africa.

Prevention implies a co-operative approach and a search for dialogue. For this reason, within its objectives and working practices the APT constantly looks for new partners and innovative approaches to prevent torture and ill-treatment. It was therefore natural that the APT in its partnership with the African Commission on Human and Peoples' Rights (ACHPR) goes beyond the simple attendance and monitoring of its sessions. It is in this context that the APT proposed to the ACHPR to organise a joint workshop in order to formulate concrete measures which could be taken to prohibit and prevent torture in Africa.

The workshop was held, from 12 to 14 February 2002, in Cape Town and on Robben Island, a symbolic place in South Africa, as it is the island where Nelson Mandela and other activists against the Apartheid regime were detained for many years. This meeting drew together African and international experts from a variety of backgrounds who worked together and exchanged many ideas and experiences during the three-day workshop. The result of this co-operative effort was the successful adoption of comprehensive guidelines and measures for the prohibition and prevention of torture, cruel, inhuman or degrading treatment or punishment in Africa, the "Robben Island Guidelines".

The Robben Island Guidelines were then endorsed by the ACHPR during its 32nd session held from 17 to 23 October 2002. The adoption

of the Robben Island Guidelines marks an historic and important step forward in the prevention of torture on the African continent. They are the first regional instrument designed to be a specific tool towards combating torture. The Robben Island Guidelines are designed to assist States to meet their national, regional and international obligations for the effective enforcement and implementation of the universally recognised prohibition and prevention of torture.

The APT welcomes this concrete result following its active co-operation with the ACHPR. For the first time since the adoption of the European Convention for the Prevention of Torture[1], the APT has been able to work with an Inter-Governmental Institution on an instrument of such importance towards the prevention of torture.

We would now like to draw the attention of all African national and regional actors, as well as international ones, to the next crucial step in this process. To have any impact on the prohibition and the prevention of torture, the Robben Island Guidelines have to be promoted and implemented. They have also to be understood as a collective endeavour of the African community to deal with the phenomena of torture and to look forward to every person enjoying the right to be free from torture and other forms of ill-treatment. This needs the co-operation and endeavour of several actors such as appropriate African State authorities, Parliamentarians, national Human Rights Institutions and NGOs. The APT will continue to assist national actors in promoting the effective implementation of the Guidelines throughout Africa.

Last but not least we would like to extend a word of thanks. The Robben Island Workshop could not have taken place without the full co-operation of the African Commission, especially Commissioner Andrew Chigovera, who was appointed to co-ordinate with the APT, and Barney Pityana, who provided advice concerning the appropriate

1 The APT was at the orgin of the European Convention for the Prevention of Torture, adopted by the Council of Europe in 1987 and which created a Committee of Experts (CPT) visiting places of detention all over Europe.

specialists and experts to invite. We thank Commissioner Hatem Ben Salem for his advice and full support since the origin of this initiative. We also appreciate the commitment of Mr. Germain Baricako, the Secretary to the Commission, and Mrs. Fiona Adolu, the Secretariat's Legal Officer.

Thanks are also due to Jody Kollapen and Victor Southwell of the South African Human Rights Commission for their invaluable advice about suitable venues and for their assistance on practical and logistical matters.

We would also like to thank, once again, the participants, especially the drafting team and those who made presentations or drafted background papers. Without their active participation, we would not have been able to formulate such comprehensive guidelines for the prevention of torture in Africa.

We would also like to express our gratitude to the generous donors. The workshop was made possible by financial contributions from the governments of the United Kingdom, Canada, Finland and Switzerland.

Finally, a special word of thanks to Ms. Stephanie Falciani, who, during her internship at the APT, transcribed many of the workshop papers from oral records. Without her dedicated assistance we could not have such a comprehensive publication of the proceedings of the historic Robben Island Workshop.

Jean Baptiste NIYIZURUGERO
Africa Programme Officer

Mark THOMSON
Secretary General

Introduction

The prohibition of torture is enshrined in many international and regional human rights instruments including Article 5 of the African Charter on Human and Peoples' Rights, which states that *"Every individual shall have the right to the respect of dignity inherent in a human being (…) All forms of exploitation and degradation of man particularly (…) torture, cruel, inhuman or degrading punishment and treatment, shall be prohibited"*. Despite this international prohibition, torture continues to be widely prevalent in over half the countries of the world, including in Africa.

The African Charter on Human and Peoples' Rights provides for the establishment of a regional human rights body - the African Commission on Human and Peoples' Rights (ACHPR), with the mandate to promote the observance of the Charter, monitor its implementation, ensure the protection of the rights and freedoms set out in the Charter, interpret the Charter and advise on its implementation. Enjoying Observer Status to the African Commission, the APT endeavours to stimulate appropriate action and to assist this body to achieve a more effective response to the question of the prevention of torture.

At the 28th session of the ACHPR, the APT proposed to hold a workshop on torture, in collaboration with the African Commission, to draft a Plan of Action for the Prevention of Torture, Cruel, Inhuman and Degrading Treatment of Punishment in Africa. It was envisaged that this Plan of Action would contain provisions relating to the legal measures, control measures and training and empowerment measures which can be implemented both at the national and regional level throughout Africa, in order to assist States in meeting their obligations to prohibit and to prevent torture.

The African Commission considered the proposal and decided, at its 29th session, to collaborate with the APT in the organisation of a

workshop on the prevention of torture and ill-treatment in Africa, and appointed Commissioner Chigovera to co-ordinate with the APT in the organisation of this workshop. Therefore, a joint (APT-ACHPR) workshop was held from 12 to 14 February 2002 in Cape Town and on Robben Island, South Africa.

The first part of this paper will describe the progress of the proceedings of the workshop whereas the second and third parts will reproduce respectively, the presentations and other workshop papers as well as the outcome of the workshop.

Part I

Narrative Report of the Workshop

Narrative Report of the Workshop

by Jean Baptiste NIYIZURUGERO,
APT Programme Officer for Africa

1. Preparations

A preparatory meeting between the APT and the African Commission was held, in Banjul, on 16 October 2001, during the 30th session of the African Commission. At this meeting, dates and venues of the workshop were decided, the initial draft programme for the workshop was discussed and the key people who should be invited to participate in the workshop were considered.

Between October and December 2001, the African Commission and the APT sent out invitations to experienced multidisciplinary persons who had been selected to participate in the workshop. Also during this period, conference rooms on Robben Island and in Cape Town were booked and the APT made various travel, food and accommodation arrangements.

Following the preparatory meeting, certain participants with recognised expertise or knowledge on torture issues were asked to prepare background papers for the workshop. These background papers were distributed to participants and were used as the basis for discussion during the workshop.

On 11 February, prior to the workshop, participants representing the African Commission[2] and the APT met and decided to revisit their proposal to draft a Plan of Action. It was envisaged that it would not be possible to come up with a comprehensive plan of action within the 3 days of the workshop; so it was proposed that the workshop should

2 See list of participants in Annexe II.

concentrate upon drafting guidelines and measures for the prohibition and prevention of torture, cruel, inhuman and degrading punishment in Africa. The workshop participants would adopt these guidelines and measures and request the Commission to endorse them at its 31st session.

2. Attendance

Overall, 26 people, from a variety of backgrounds, including representatives from: the African Commission, African-based NGOs, international NGOs, African police services, African sub-regional institutions, African and international experts, as well as representatives from the APT, participated[3] in the three-day workshop.

3. The opening ceremony

In his opening remarks, the **President of the APT, Marco Mona** welcomed all the participants and experts to the meeting. He noted that the venue chosen for the meeting was of great significance as the people of South Africa had suffered torture and slavery under the system of Apartheid. He stated that the African Charter and the United Nations Convention against Torture (UN-CAT) have laid down the basic principles prohibiting torture and that the main aim of this meeting is to simply translate these principles into concrete terms and measures for implementation in Africa. He informed the participants not to expect a series of lectures but encouraged them to actively participate in the workshop and share their ideas with everyone. Mr Mona concluded his remarks by informing the participants of the major objectives and activities of APT, whose achievements since its inception have included, among others, the establishment of the European Committee for the Prevention of Torture (CPT).

3 See list of participants in Annexe II.

Speaking **on behalf of the African Commission, Mr. Chigovera**, expressed gratitude to the Honourable Minister of Justice and Constitutional Development Dr. P. Maduna and the Government of South Africa for hosting the Meeting. He also expressed thanks to all the participants who agreed to come and share their knowledge at this workshop. Their presence here, he said, demonstrates their commitment to contribute to the promotion and protection of human rights in Africa.

He noted that the African Commission and the APT decided to organise this workshop to discuss the phenomenon of torture and ill-treatment with a view to coming up with proposals for improving and strengthening the mechanisms for the prevention of torture in Africa.

He explained that the workshop fell within the promotional mandate of the African Commission in terms of Article 45 of the African Charter, which aims to help strengthen the Commission's ability to monitor States Parties' compliance with their obligations under Article 5 of the African Charter. He however informed the participants that despite the prohibition of torture, cruel and inhuman or degrading treatment under Article 5, and the States Parties' undertaking to take measures to prevent these abuses, the Commission continues to receive numerous complaints of torture, cruel and inhuman or degrading treatment from many African countries. Thus it is in light of this, that the APT and the African Commission considered it necessary to take a joint initiative that would strengthen the work in preventing torture in Africa.

He encouraged participants attending the workshop to try and design a common understanding of torture and come up with guidelines to ensure efficient implementation of the African Charter and compliment other existing relevant instruments such as the UN-CAT.

In his opening address, the **Honourable Minister of Justice and Constitutional Development in South Africa, Dr. P. Maduna**, congratulated the APT and the ACHPR for the joint initiative and emphasised the importance of improving the human rights culture within Africa, in particular the right for everyone to be free from torture and other forms of ill-treatment or punishment. Dr. Maduna stated that in most cases of violence and torture, agents of the State were to be blamed. He opined that to move forward, however, two dimensions of torture needed to be reviewed, namely the vertical dimension i.e. the State to citizens and the horizontal one i.e. between citizens. He recounted cases of violence by vigilantes as well as of political intolerance, which has become widely associated with acts of torture.

He stated that the phenomenon of torture, particularly in South Africa, is a result of the political intolerance that existed during the period of Apartheid. This history produced a culture that bred and allowed violence to subsist as part of the way of dealing with various problems including social problems; this situation primarily prevailed within the black communities. For instance, under the Terrorism Act, detention without trial was legal and it was in such cases that persons detained were held incommunicado allowing for confessions to be obtained using torture. This was State-sponsored torture and it was used to obtain the truth out of the so-called "terrorists". However, upon coming to power, the new government passed a new constitution that contained a bill of rights. In this new constitution, torture is not to be tolerated even where persons meting it out are authorities of the State; yet, despite this, torture is still practised. As such, the present government has established bodies such as the South African Human Rights Commission (SAHRC) and the Independent Complaints Directorate (ICD) to deal with such problems. The ICD for instance is mandated to investigate transgressions of the law by police officers, and this includes allegations of torture.

He said that although South Africa has ratified the UNCAT, torture is not an offence under the penal laws of South Africa. However, he

expressed the hope that this will be done in the near future, since the courts in South Africa are reluctant to admit confessions that are alleged to have been obtained under duress.

The Minister stated that although torture is not tolerated in South Africa today, institutions and NGOs in South Africa should endeavour to do more in terms of educating people to prevent and fight against the problem of torture. He concluded by reiterating the fact that South Africa is an ally of the APT in this struggle and advocates that prevention should be combined with prohibition in the future.

4. Presentations and discussions

The focus for the first two days' activities concerned discussions that were based around presentations given by different experts on the following main themes: legal, control, rehabilitation and reparation as well as training and empowerment measures to prevent torture.

a. Legal measures

In his presentation on legal measures, **Prof. Malcolm Evans** stated that human beings, whilst enduring pain caused by physical or mental ill-treatment that focused on breaking their spirit, can however be damaged by forms of humiliating treatment that degrade them in their own eyes as well as in the eyes of others. This element is brought out clearly in Article 5 of the African Charter and other international instruments which conceive of torture, cruel, inhuman or degrading treatment as acts, when committed by the State or with the connivance of the State, that are not to be tolerated.

He stated that it is important that those responsible for acts of torture, whether they are individuals or States, should be held accountable; but what must be sought is not only to outlaw the practice but also to

prevent such acts. Additionally, States should endeavour to attend to the needs of victims of such ill-treatment.

Thus, Prof. Evans suggested that the key to effective prevention lies in accepting the need to put in place mechanisms that can lessen the likelihood of torture and ill-treatment occurring. States committed to preventing torture should be willing to accept limitations upon the powers of their own officials and should permit necessary intrusions into their powers and prerogatives in the interests of protecting those in a vulnerable position, irrespective of who they are.

Prof. Evans emphasised a number of key legal measures to be employed in the prevention and prohibition of torture including: the importance of criminalising torture, recognising and reinforcing of the prohibition of torture under national law, and implementing criminal sanctions and measures to respond to the needs of victims.

In conclusion, Prof. Evans observed that the practice of torture and ill-treatment should not be equated with some form of "illness" or "disease" that can be eradicated by prescribing the right form of treatment. Further that there is no easy solution to this problem, but it can be tackled by a combination of measures, and that it should not be expected that States would respond in full to this challenge through a single measure. Therefore, what is needed is a sustained campaign based around a well-conceived understanding of how to address the issue of torture.

The second presentation was given by **Mr. Mabassa Fall (FIDH)** who also dealt with legal measures to prevent torture but focused, in particular, upon measures to combat impunity. He emphasised the importance of the principle of universal jurisdiction as an essential action against impunity and the need for national law to allow for the extradition or punishment of perpetrators of acts of torture. He called for the ratification of international instruments including the Rome

Statute concerning the ICC, and the Protocol to the African Charter establishing the African Court.

In the initial discussions that followed the presentations, participants expressed the need to ensure that domestic laws prohibiting acts of ill-treatment should bear in mind the horizontal application of acts of torture that include vigilantism or mob justice. It was the common feeling amongst the participants that even though torture is legally unacceptable, it has been morally accepted within various communities. Therefore it is very important that people are educated about the ills of committing acts of torture in whatever form, and this could be done mainly through the media and other sources.

It was also observed that the establishment of national human rights institutions in Africa was an important development, as these institutions have the mandate to carry out human rights education and urge States to respond to their international obligations.

Attention was also drawn to the effects of the 11 September 2001 attacks in New York and Washington DC in the USA on respect for human rights. Many States are presently in the process of enacting anti-terrorist laws that allow "alleged terrorists" to be held incommunicado for an indefinite period of time.

Participants also noted that African States have expressed a strong commitment to respect human rights, democratic principles, the rule of law and good governance as required by the Constitutive Act of the African Union which most have ratified and the New Partnership for Africa's Development (NEPAD). This should encourage African States to take steps to prevent and prohibit torture on the continent.

b. Control measures

The first presentation on this theme was delivered jointly by **Dr. Tertius Geldenhuys and Mrs Antoinette Brink** from the **South African Police Services** (SAPS). This presentation concentrated upon the establishment and enforcement of regulations for the treatment of persons deprived of their liberty and in particular focused upon the efforts of the South African Police Services in this area.

In the discussions following the presentation, the participants learnt that the SAPS developed their Policy with the assistance of the European Committee on the Prevention of Torture. The presenters also informed the participants that when the Policy was implemented, some of SAPS members were reluctant to use it in their work but the idea was "sold to them" by telling them that using it would improve their level of professionalism and also protect them from false allegations of torture.

The second and third presentations on control measures were concerned with specific visiting mechanisms and their role in the prevention of torture. The second presentation was delivered by **Mr. Patrick Zahnd, Regional Representative of the ICRC**. Mr. Zahnd gave a brief history of the ICRC and stated that it first began offering its services in 1863 but became seriously active in 1918 when they started visiting civilian internees and detainees. The idea to form such an organisation arose out of the need to provide humanitarian services to individuals by a neutral and independent organisation. However, gradually the ICRC has extended its mandate to cover prisoners of war.

He stated that the ICRC is a global movement whose central purpose is to prevent and alleviate human suffering, without discrimination, and to protect human dignity. The assistance provided whilst carrying out its mandate may take a variety of forms and depends on the region and nature of the crisis. Their approach is also based on build-

ing a relationship of trust with the authorities wherever the ICRC is working.

However, in modern times most of the emergencies that the ICRC has to deal with are characterised by outbreaks of extreme violence usually directed against civilians. These may coincide with or even indirectly cause famines, epidemics and economic upheaval.

Thus in situations of international armed conflicts, ICRC delegates have the right to visit prisoners of war and civilian internees, and in non-international armed conflicts and situations of internal violence the ICRC may offer its services to visit detainees. In those situations of conflict and internal violence it is normal to find that persons that have been deprived of their freedom are in vulnerable positions. In such instances, the ICRC among other things works to prevent or put an end to disappearances and summary executions, torture and ill-treatment. It does this by carrying out visits to places of detention and, if necessary, provides material or medical assistance to detainees.

During visits to places of detention, ICRC delegates have the right to conduct private interviews with detainees and, should the need arise, follow up particular cases right to the time of their release.

In conclusion, Mr. Zahnd emphasised that maintaining their impartiality while offering their services is an important aspect of the ICRC's work and this has contributed tremendously to the success of their work world-wide.

Prof. Renate Kicker, member of the CPT, then outlined efforts undertaken universally by various organisations and institutions to establish a universal visiting mechanism for the prevention of torture and ill-treatment of persons deprived of their liberty by public authorities. Her presentation however concentrated on the efforts undertaken at the European level.

Within the framework of the Council of Europe, the European Convention on the Prevention of Torture and Inhuman and Degrading Treatment or Punishment was adopted in 1987 and has been ratified by 41 member States. This Convention established the European Committee on the Prevention of Torture (CPT) whose composition of Experts is equal to the number of Member States. The CPT became operational in 1989.

The CPT aims at preventing human rights violations in special situations where there is a risk of ill-treatment, for instance where people are kept in detention against their will, and in carrying out its work, the CPT closely follows the procedure and methodology used by the ICRC.

Prof. Kicker stated that the CPT's role is mainly preventive in nature and this is achieved by assessing whether there is an imminent risk of ill-treatment and also whether conditions and circumstances exist that could degenerate into torture. Thus the CPT visits places of detention in member States on a periodic or regular basis and makes recommendations to the heads of the institutions visited and to the government. Reports of the visits undertaken may be published with the authorisation of the State concerned. Following the visits, the CPT monitors adherence to its recommendations through ongoing dialogue with the member State.

Prof. Kicker informed the participants that on 1 March 2002, the First Protocol to the European Convention on the Prevention of Torture would come into force. This Protocol empowers the Committee of Ministers of the Council of Europe to invite non-member States to accede to the Convention regardless of their geographical location. Hypothetically this means that African States could be invited to accede to the Convention.

To illustrate the potential for taking concrete steps to prevent torture and ill-treatment by setting up national mechanisms, Prof. Kicker

informed participants about the Austrian regional mechanism that was established to prevent and prohibit torture in the country.

Following a visit to Austria in 1994, the CPT recommended that the Austrian authorities establish a body of independent persons to investigate the methods used by police officers of the Security Bureau in Vienna during the detention and interrogation of suspects. Based on those recommendations, in July 1999, the Austrian Minister of the Interior established an Advisory Council to deal with questions relating to the protection of human rights. The Advisory Council is composed of representatives from some governmental ministries, NGOs and independent experts. It has the mandate to monitor and evaluate activities of law enforcement agencies and advise the Federal Ministry of the Interior on human rights issues. To enable it to carry out its mandate effectively, six regional Commissions have been set up in Austria and became operational in 2000, and they follow the standards set by CPT.

Such an example shows that the relationship between existing or emerging regional mechanisms and existing or emerging national mechanisms can be approached imaginatively.

Prof. Kicker concluded her presentation by suggesting that the African Region should endeavour to establish a regional mechanism for the prevention of torture and that the CPT could serve as a model for such a mechanism.

In the discussions that followed the presentations, participants wanted to know how the CPT and ICRC are funded. Prof. Kicker informed them that the Council of Europe finances the Committee, and in those instances where other countries will be invited to be party to the European Convention, such countries are likely to pay certain amounts to the Council of Europe in that respect. Mr. Zahnd informed the participants that the ICRC on the other hand is funded by countries that are party to the Geneva Conventions. On the question of revealing

information on violations of human rights, Prof. Kicker conceded that even though the CPT realises that information from NGOs is important for the CPT field work, the CPT cannot release information gathered from field visits to States because of the rule of confidentiality.

The fourth presentation on control measures dealt with complaints mechanisms required to prevent torture and was delivered by **Advocate Karen McKenzie, Director of the Independent Complaints Directorate (ICD), South Africa.** She stated that the ICD is an independent control mechanism, which is imperative in dealing with torture in South Africa. The ICD has conducted investigations into cases of torture by assault, suffocation, electric shocks, etc. Mrs. McKenzie gave a brief illustration of two cases that were brought before the ICD, which related to officers who had tortured certain persons to obtain information. These matters were investigated and the ICD recommended that the perpetrators be prosecuted and that damages should be awarded to the complainants.

Following the brief introduction on the ICD, Mrs. McKenzie made suggestions that the workshop should consider when coming up with guidelines and measures for the prevention and prohibition of torture. She suggested that the workshop should:

- Consider a wide definition of torture. Most legal systems do not define torture and when one speaks of torture people tend to relate it to only physical harm only e.g. grievous bodily harm, assault etc.

- Encourage the establishment of totally independent bodies similar to the ICD. These should serve as control mechanisms that should also be allowed to conduct independent investigations without interference and also commence investigations on their own initiative – i.e. be proactive rather than reactive

- Encourage the use of independent medical experts who, unlike State-sponsored medical experts, can make truthful examinations

without fear or favour because they are not accountable to State structures

- Encourage those institutions and organisations that are responsible to undertake regular visits to police holding cells, as well surprise visits.

In concluding her presentation, Mrs. Mackenzie emphasised that bodies given the responsibility to investigate allegations of torture should endeavour to cultivate good ethical standards, dignity and integrity, but also have the powers to:

- search detention facilities and seize instruments
- subpoena witnesses
- conduct enquiries
- order departmental prosecutions

In the discussions that followed her presentation, the participants learnt the following: that the ICD reports to Parliament, after which the reports are published; that a good relationship does exist between the ICD and the SAPS: and, further, that the ICD carries out awareness training sessions on human rights and prevention and prohibition of torture.

The last presentation on control measures was delivered by **Honoré Tougouri, Judge, President of the African Penitentiary Association (APA)**, who focused on control measures in police and prisons to prevent torture. Mr. Tougouri explained that the "Association Pénitenciaire Africaine" is a regional organisation that contributes to the improvement of detention conditions in Africa and encourages States in Africa to undertake penal reform.

He stressed that in dealing with the prevention of torture in Africa, it is pertinent that the question of the resources to made available to police forces be adequately addressed. Police forces need to be properly trained in order for them to carry out proper investigations, and also to be provided with the equipment that will enable them carry out their tasks in a proper manner.

With respect to prisons, he stated that the culture of silence is prevalent within prisons and this makes it difficult to implement control measures. Therefore there is a need for external checks by the judicial and legal system.

Mr Tougouri concluded his presentation by recommending that:

- legal authorities and other responsible authorities should endeavour to undertake visits to prisons and other places of detention
- sentences handed down by judicial authorities should be properly executed within prisons
- civil society NGOs should be encouraged to undertake visits to prisons and places of detention.

With regard to measures that can be taken internally by prisons and police forces, he recommended that:

- training curricula of staff and professionals within the police and prisons service should also address ways of preventing torture
- a defence system be established to assist the police when faced with disciplinary measures

c. Rehabilitation and reparation measures

A presentation on rehabilitation and reparation measures required to prevent torture and ill-treatment was delivered by **Father Michael Lapsley, Director of the Institute for Healing of Memories**, South Africa. Father Lapsley gave a brief background of how the Institute was established. The Institute is a trust that seeks to contribute to the healing journey of individuals, communities and nations. This presentation comes from a person who is a survivor of State sponsored torture. In April 1990 Fr. Lapsley received a bomb in a package containing religious magazines. He lost both his hands and one eye and suffered serious burns. After recovering, he came back to South Africa to assist people who had suffered from years of abuse by living under a system of violence and oppression.

In his presentation, Fr. Lapsley stated that torture was endemic in the South African system during apartheid. With the collapse of apartheid, the new South African government set up a Truth and Reconciliation Commission (TRC) to uncover as much as possible the truth about past gross violations of human rights. It was hoped that this exercise would facilitate the process of understanding the people's divided past and that the public acknowledgement of the suffering and injustice would help restore the dignity of victims and afford perpetrators the opportunity to come to terms with their own past.

The TRC broke the culture of silence and in so doing the State, for the first time, was forced to acknowledge the horror stories and the fact that such activities were going on. However, the whole process was lengthy and had its drawbacks. For instance, a Reparation and Rehabilitation Committee was established to provide, amongst other things, reparation to victims of gross human rights violations. In this regard, the Committee had to come up with measures to be taken with regard to the granting of reparation to victims, rehabilitation and restoration of the human and civil dignity of the victims or measures to be taken to grant urgent interim reparations to victims. However,

the granting of reparations has not been very successful, to the extent that urgent interim reparations were not realised until after the end of the hearings by the TRC.

He cited another issue that he felt was a drawback – the establishment of an Amnesty Committee whose principal function was to consider applications for amnesty received from perpetrators of offences or derelicts associated with a political objective. Persons who confessed to committing gross human rights violations gained amnesty and therefore could not be held criminally or civilly liable for the acts to which they had confessed. Fr. Lapsley observed that by establishing such a Committee the government denied the victims and survivors of torture an avenue that might have contributed to their healing - recourse to retributive justice.

Father Lapsley held the view that the granting of amnesty to perpetrators of torture serves to cause pain to their victims. In such cases some of these victims may seek to find solutions through other means that may give rise to civil wars. He also insisted that some of those persons who were members of the police force and committed acts of torture and later confessed should never have been allowed to go back and serve in the SAPS. Furthermore, to date, victims and survivors are still awaiting the State's response to the recommendations that were put forward by the TRC.

In the light of all of this, various communities in South Africa have tried to find ways to assist the healing of individuals and communities who suffered gross human rights violations during apartheid.

Father Lapsley also drew the attention of the participants to what he called "unpopular victims of acts of torture" such as criminals, some of whom suffer mob justice, asylum seekers etc. Governments are not committed to protecting this group of people but rather their other citizens. Gay people are also unpopular victims because they are a minority group and in some countries Heads of State have encouraged the torture of such people.

Father Lapsley concluded his presentation by stating that in any society, once people are classed as "the other" they are categorised as less human. This then opens up the possibility of torture. He therefore called upon faith communities to play the important role of upholding the sanctity of the human being.

d. Training and empowerment measures

The first presentation on this theme was delivered by **Mrs. Hannah Forster, Executive Director of the African Centre for Democracy and Human Rights Studies (ACDHRS)**, and concerned the role of NGOs in training and awareness initiatives to prevent torture and ill-treatment. Another presentation on this theme was given by **Dr. Barney Pityana, Commissioner of the ACHPR**, who focused on measures required on public education, sensitisation, and awareness to prevent torture and ill-treatment.

In her presentation, Mrs. Forster reviewed the situation in Africa with respect to the existence of torture. She noted that situations of war and armed conflicts and poor conditions of detention have all contributed to the problem of torture on the continent. She observed that besides those persons who are traditionally victims of torture –such as political opponents and media practitioners– human rights defenders, refugees and displaced persons, women, children and persons with disabilities also increasingly suffer acts of torture and other forms of degrading treatment. In certain circumstances, health professionals have joined police and security officers in carrying out acts of torture.

Mrs. Forster stated that the concept of training and empowerment in human rights exists in all the major international human rights instruments. Human rights education is aimed at building a universal culture of respect for human rights and this can be achieved through training, dissemination of information, and empowerment of persons. In terms of training, therefore, the following actions have to be taken in order to prevent torture:

- Professionals, including doctors, surgeons, psychiatrists, psychologists, human rights experts, lawyers, police officers, prosecutors, judges, etc., should be trained to help victims of torture. Such training should be geared towards providing these professionals with skills that will enable them to determine whether a person has been tortured

- Political leadership should be aware of issues pertaining to torture

- Governments should be encouraged to ratify the UN-CAT and other international human rights instruments that call for the prevention and prohibition of torture, and subsequently revise their national laws to address the prosecution of torturers and provide reparation to victims of torture

- Civil society should be increasingly aware and involved in the fight against torture and efforts geared towards promoting a culture of tolerance; non-violence as well as respect for human rights within societies should be encouraged

- Practical ways should be considered of protecting women and children against torture, particularly in situations of armed conflict.

Mrs. Forster concluded her presentation with some recommendations to the African Commission, States and civil society.[4]

In his presentation, Commissioner Pityana informed the participants that under Articles 30 and 45 of the African Charter, the mandate of the African Commission focuses on the promotion and protection of human and peoples' rights. Based on the premise that the African Charter has to be known and understood if it is to be implemented on the continent, Article 45(1) mandates the African Commission to carry

4 See the outlines of her presentation on page 141.

out human rights education and public awareness. However, the reality is that the African Charter is not well known or even applied in many of the African jurisdictions and yet its potential is enormous, as all African States except Morocco have ratified it. The norm has been for people to either criticise the African Charter or the members of the African Commission. The challenge that exists for the African Commission therefore is to popularise the African Charter in the promotion and protection of human rights.

Commissioner Pityana referred to some recent positive changes that are bound to enhance the work of the African Commission - the adoption of the Grand Bay Declaration in April 1999, which is based on principles of the African Charter, publication of the Commission's work with the help and support of NGOs and donor partners. Additionally, the Constitutive Act of the African Union adopted in 2000 embraces the key principles enshrined in the African Charter. This should give a new dimension to the awareness of the African Charter. It will be elevated to a higher plateau than before, requiring more than ever that States should base their principles of governance on the African Charter. In this regard, the African Commission therefore has a higher duty to create awareness of the principles of human rights and good governance that are enshrined in the African Charter. Although this had been the idea when the African Charter was drafted, the tendency has been for the African Centre for Democracy and Human Rights Studies to carry out the training. Whereas this relationship is important, the African Commission should take the lead in training, with the support of the African Centre and other NGOs. It is also very important that institutions that carry out training on the African regional human rights system should endeavour to bring governments, judicial officials and the legal profession on board. For instance, judges should be able to access decisions of the African Commission so they apply the African Charter in their countries.

Commissioner Pityana suggested that it is important for the following steps to be taken at the national level:

- NGOs should endeavour to submit complaints to the African Commission as this will enable it to interpret and elaborate on the principles contained in the African Charter

- Ensure that institutions and bodies that monitor and apply human rights principles within a State are established and supported

- Institutions and NGOs should forward their reports of human rights situations in their countries of operation, especially since States party to the African Charter do not often comply with the requirement to submit periodic reports under Article 62 of the African Charter. In this way, such institutions and NGOs play a role in raising public awareness on the human rights situation

- The African Commission recognises and encourages the establishment of national human rights institutions and this makes them a key organ in raising public awareness and carrying out public education and awareness.

In conclusion, Commissioner Pityana acknowledges that in many countries the phenomenon of vigilantism has developed. This could be as a result of many factors, which include:

- Lack of public confidence in the police. In such cases the community will support vigilante groups as they take action against criminals

- Vigilantism is part of a political environment

- Economic or social reasons, e.g. social upheavals, and as such there is an active presence of non State actors

Therefore, in the face of all these problems, it is the responsibility of the African Commission to ensure that the principles of the African

Charter have a cascading out reach to States, institutions and NGOs at the national level.

In the discussions that followed the presentations, participants suggested that the African region should draft a Convention on the Prevention of Torture, which could establish an independent body that will, amongst other things, be aimed at supporting national institutions. Commissioner Pityana however cautioned that to advance a new instrument in the African context might be counter-productive, as mechanisms are already in existence that have not been used to their optimum effect, because they are troubled by a lack of resources, amongst other things. For instance, the Protocol to the African Charter establishing an African Court of Human and Peoples' Rights has not yet received the ratifications required for it to come into force; the process to draft the Women's Protocol is still dragging on. However, on the other hand, the Constitutive Act establishing the African Union was ratified within six months. He advised that with adequate support, the African Commission could effectively address this issue through some kind of structure established under the Commission – in this case, preventive bodies would be more desirable than bodies that deal retroactively, for instance courts and complaints system.

Commissioner Pityana also informed the participants that although the African Charter does not define torture, under Article 60 of the Charter, the African Commission can draw inspiration from international law and various international human rights instruments. This therefore can allow for torture to be defined expansively for purposes of the African Charter. Commenting on the suggestion that the African Commission should train public servants, he stated that this would not be very beneficial as there is a high turnover in public service. Thus training may not be very effective as there are new personnel all the time.

5. The drafting process

At the end of first day, as the presentations and discussions had been extremely focused and detailed, it was decided that a preliminary draft should be presented to the participants in a plenary session next day. Accordingly, a core drafting group comprising of Prof. Evans, Prof. Kicker, Mr. Baricako, Mrs. Forster, Mr. Niyizurugero, Mrs. Long and Mrs. Adolu, was organised to draw together the various elements of the discussions and presentations and to produce a preliminary draft for discussion within the workshop the following day.

This core group met in the evening and discussed the content of a preliminary draft based largely on the ideas and elements previously drafted by Debra Long and Jean Baptiste Niyizurugero. The core group drafted a preliminary document divided into three general themes i.e. the prohibition of torture, the prevention of torture and responding to the needs of victims. These three main subjects were then subdivided into concrete measures to be implemented or followed. During the morning of the second day, while presentations were continuing, two members of the core group continued with the drafting of the document, which was presented and discussed in the afternoon.

6. Discussions on the preliminary draft document

In the afternoon of 13 February, a preliminary draft document was presented to the workshop by Prof. Malcolm Evans, who outlined the drafting process, the discussions between the core group members and the main contents of the document, and invited comments and suggestions for possible inclusion or exclusion.

It was decided that the document, rightly, took the form of setting out guidelines and measures for the prohibition and the prevention of torture. It was therefore agreed to call it "Guidelines and Measures for the prohibition and prevention of torture, cruel, inhuman and

degrading treatment or punishment in Africa" (The Robben Island Guidelines).

There was a discussion about the need to define torture in the document, but it was decided to avoid this, as there was a risk that such a definition could be restrictive. There then followed a lively discussion regarding the contents of the document.

Of particular note, there were lengthy discussions on the imposition of the death penalty and corporal punishment. The discussions concerned the lack of an international prohibition on the death penalty and the absence of jurisprudence confirming that the imposition of the death penalty itself amounts to torture. Further, the continued imposition of judicial corporal punishment in many African States was also discussed.

Other elements that were discussed briefly for possible inclusion in the text concerned the role for the media in the prevention of torture and gender-based forms of violence.

It was then concluded that the core group, taking into account the various recommendations put forward during the reviews, would redraft the document for final discussion and adoption by the workshop on the last day. The core group met again in the evening and, drawing upon the day's discussions, redrafted the document for presentation to the workshop.

7. Adoption of the Robben Island Guidelines

On 14 February 2002, in the morning, the workshop participants travelled to Robben Island for the finalisation of the draft document. Before the meeting, participants were given a short-guided tour of this historic Island and former prison where many political prisoners had been held.

The revised text was then presented to the participants for their consideration and finalisation. There were no changes of any substance to the text, however certain provisions were redrafted for the sake of clarity. Following the final discussions the workshop participants adopted the provisions of the Robben Island Guidelines[5] as a whole. Lastly, a draft joint statement which had been prepared earlier was discussed and agreed on by the workshop participants and was called the "Robben Island Statement".[6]

8. Closing ceremony

The co-chairs[7] thanked the participants for their substantial contributions to the workshop and the drafting process, and made some closing remarks. Participants were given the opportunity to give their comments about the workshop. The **APT programme officer for Africa, Jean Baptiste Niyizurugero**, outlined the steps to be taken as a follow-up to the workshop, looking forward to the future endorsement of the Robben Island Guidelines by the African Commission and its implementation.

The workshop was concluded by the closing speech of **Judge Desai from the High Court**, **Cape Province Division, South Africa**. He stated that the history of Africa is filled with happy moments but also with terrible occurrences that accommodated torture and ill-treatment like slavery, apartheid and genocide.

He said that for a long time South Africa and its people suffered apartheid and now as a country new to democracy they have quickly learnt that building democracy and democratic institutions is not an easy process. They have learnt the importance of international human

5 See the Robben Island Guidelines on page 173.
6 See the Robben Island Statement page 171.
7 Marco Mona and Andrew Chigovera co-chaired the workshop.

rights instruments and are trying to develop a culture of human rights which is an anathema to torture and abuses.

He told the participants that the final day of this workshop has taken place in a historic place – Robben Island. He stated that as an advocate during the era of apartheid, he defended people from Robben Island whose common characteristic was having the dignity and courage to fight apartheid and hoped that the document produced by the workshop would also reflect the spirit shown by the great people who spent years in the walls of Robben Island Prison. In conclusion, he expressed his support for the efforts of all the participants during the workshop and more generally for their commitment to the prevention of torture and stated his desire that the Robben Island Guidelines gain wide support throughout Africa.

9. General comments and conclusion

Participants considered the workshop as a stimulating and interesting experience and all thanked the APT for drawing together participants from a variety of backgrounds to work together (Police, NGOs, IGOs, independent Lawyers, African and international academics etc.). Some participants expressly stated that they were normally used to discussing issues within homogenous groups and noted that this workshop was a good experience. Everyone was pleased with the result of the workshop namely the production and adoption of guidelines and concrete measures to prevent torture and ill-treatment in Africa.

The choice of Robben Island as the venue for the adoption of a document designed to breathe new life into the struggle against torture in Africa was extremely appropriate. The participants were moved by the story of the life of the prisoners on the Island. For many of them it was the first time that they visited the Island, which is recognised as a symbol for the fight against oppression. The prison was built in order to

humiliate and destroy peoples' spirit but through the tenacity and perseverance of individuals such as Nelson Mandela it became a symbol of reconciliation and a shared humanity.

Ahmed Katharada said:[8] *"We want Robben Island to reflect the triumph of freedom and human dignity over oppression and humiliation"*. I would add that we want the Robben Island Guidelines to symbolise the start of a new era for the eradication and the prevention of torture in Africa.

8 Ahmed Katharada is one of the activists against the Apartheid regime in South Africa, who were detained on Robben Island for many years.

Part II

Presentations and Workshop Papers

A. Opening Speeches

Opening Remarks

by MARCO MONA,
President of the APT

Ladies and Gentlemen,

It is a great honour and pleasure to greet you here at this opening of the workshop on prevention of torture in Africa. I am talking of course on behalf of the APT, you see us here as an inviting body together with the African Commission on Human and Peoples' Rights and myself having the privilege to co-chair this workshop together with Commissioner Andrew Chigovera, which is the outcome of a long collaboration and good work. I'll say something about how we, the APT, fit into this picture, right away.

But first let me express my gratitude that this venue has been made possible and that so many good men and women are gathered together, united by least two characteristics: concern and expertise in human rights and in the matter of combating torture and ill-treatment.

The Honourable Minister of Justice, Dr. Maduna, does us the great honour to acknowledge the aims of this workshop by attending and speaking to us at the very opening, thank you very much, Honourable Minister. Thanks must also be extended to the experts who found their way to Cape Town.

What is the goal of this workshop as far as we are concerned? There are some basic principles set down in the African Charter on Human and Peoples' Rights that prohibit torture and inhuman treatment; and the UN Convention against Torture asks for governments of the treaty bodies to do anything that prevents torture acts. What we would like to achieve is to help translate these two principles into

concrete measures, namely how to go about preventing torture and ill-treatment in African States.

This is why and how we, the APT, enter in this discussion: Looking for the obvious step from combating torture to preventing torture. This has been our work for 25 years now - the European Convention on the Prevention of Torture[9] is one of the achievements; others such as the Optional Protocol to the UN Convention Against Torture are en route. So we would like to bring to this workshop some knowledge as to how this can be done. Mind you, we have no intention nor any right to give lectures, we are awaiting your response on how to proceed in your countries and are here to learn. If together we succeed in drafting a good recommendation, we'll be very happy. Of course we, as much as you - I am sure - would like to see it work tomorrow. This is obviously not so easy, there are still some barriers to overcome. Let's do it, if not for tomorrow then for the day after.

You may have questions as to the outcome, the organisation, and the basis on upon which we work here. If so, please ask Debra Long and Jean Baptiste Niyizurugero, our APT officers who are present; they will know the answer. You may also ask me; I may not know the answer right away but it is said that I am a good listener - so you would at least have this advantage.

The APT is active in the field of prevention of torture. It is recognised world-wide that our aim - to be there before it may happen - is an important part of the tough fight against this terrible ulcer of humanity called torture. I invite you all to join us in this efforts; let's take advantage of each other's expertise and commitment and take a big step forward.

9 www.cpt.coe.int/en/refdocs/ecpt.htm

Opening remarks

by ANDREW CHIGOVERA,
Commissioner of the African Commission on Human and Peoples' Rights

Ladies and Gentlemen,

On behalf of the African Commission, I would like to thank the Honourable Minister of Justice and Constitutional Development Dr. Maduna for his agreement to open this workshop. This is a demonstration of the commitment of the Republic of South Africa to human rights issues. I would also like to add my voice to that of the President of the Association for the Prevention of Torture (APT) Mr. Marco Mona in thanking all the participants who have kindly agreed to come and share their knowledge with us at this workshop.

Their presence here is a demonstration of their commitment to contribute to the promotion and protection of human rights in Africa.

In accordance with their respective mandates, the African Commission and APT decided to organise this workshop to discuss the phenomenon of torture and ill-treatment with a view to coming up with proposals for improving and strengthening the mechanisms for the prevention of torture in Africa.

This workshop falls within the promotional mandate of the African Commission in respect of Article 45 of the African Charter to help strengthen the Commission's ability to monitor States Parties' compliance with their obligations under Article 5 of the African Charter. It should be stated here that despite the prohibition of "torture, cruel and inhuman or degrading treatment" under Article 5, and the States Parties' undertaking to prevent it, the Commission continues to receive numerous complaints of torture, cruel and inhuman or degrading treatment from many African countries. In light of this, the APT and the African Commission considered it necessary to work on strengthening the fight against torture in Africa.

It was against this background that the African Commission welcomed the APT's proposal amongst other things to organise this workshop. I take this opportunity to thank the APT on behalf of the African Commission for the tireless efforts they have made in order to prevent torture and ill-treatment in Africa and the world over and in particular for undertaking to strengthen the African Commission in this regard.

I would therefore encourage the APT to keep up the momentum and continue the fight because there are many challenges ahead. I call upon the human rights organisations and human rights activists to support this initiative because the work to be done, in order to ensure effective prevention and prohibition of torture within our countries, is still enormous. All the 53 OAU member States are party to the African Charter and of these about 35 have ratified the UN Convention against Torture. Nevertheless we are still receiving numerous reports of torture and various forms of degrading and inhuman treatment.

It is therefore our individual and collective duty to try and design a common understanding of torture and come up with guidelines to ensure efficient implementation of the African Charter and complement other existing instruments such as the UN Convention Against Torture as well as other relevant instruments.

I am confident that during the three days we are here, the participants will be able to come up with concrete proposals to that effect. The experience, expertise and determination of every participant will undoubtedly contribute to the achievement of the objectives of this workshop.

Once again, I would like to thank the APT officials for the excellent arrangements made and the commitment demonstrated during the preparation of this workshop.

I would also like to thank the South African Government for giving us an opportunity to hold this important workshop on its soil.

Let me also extend my appreciation to all who, in one way or another, contributed to the organisation of this meeting.

I thank you for your kind attention.

Opening speech

by DR. PENUELL MADUNA,
Minister of Justice and Constitutional Development, South Africa

Ladies and Gentlemen,

First of all, I want to thank the APT and all of you here this morning for having chosen our country as the place where this important workshop on the prevention of torture, cruel, inhuman and degrading treatment on the African continent is to be held. We are indeed touched by your decision, as a people and as a Government.

For us, there have always been two relationships in any matter pertaining to torture, cruel, inhuman and degrading treatment.

There has always been, and there still is, the problem of involvement of State agents and State agencies in torture, cruel, inhuman and degrading treatment, and I suppose, whenever the problem is mentioned, a lot of us immediately think of the vertical relationship – the relationship between the State and the subjects of the State. But there is also a horizontal relationship involved here. In my own country we have problems of vigilantism. People who really take the law into their own hands, for example who grab a person who has broken into their house, maybe to steal a loaf of bread and one or two things and then beat him to a pulp, if not kill him. Here in the Western Cape, this year, we saw pictures of young people who had been killed in one of the townships by people who have indulged in vigilantism, and it wasn't the first nor even the last instance. Last year we saw many examples of what I'm talking about in other parts of our country.

As a part of this horizontal version of the problem are the security companies. I'll use a very interesting example to illustrate what I'm talking about. One day my own son and some of his friends, after finishing college, went out together, boys and girls, they enjoyed their evening and some alcoholic drinks came into play as well.

Before they knew what was happening, the private security companies' agents were beating them to a pulp and afterwards they took them to the nearest police station. They had to be hospitalised for three days. Again, this is an element of vigilantism. The case is still outstanding and I hope that the law will actually be allowed to take its course, so that people should know that this sort of behaviour is unacceptable.

There has also been a big problem of political intolerance, as a result of which people would treat each other with violence, once again the State may or may not have been involved.

In our past, during the Apartheid regime, the State-sponsored violence, torture etc., was a known thing. I know a lot of people, including judges, who tended to disbelieve people who said that the so-called confession they had given to the judge had been extracted by force. By the way, detention without trial was allowed under the law. I personally was detained under the provisions of section six of the Terrorism Act. A whole lot of things used to happen in incommunicado detention. So the decision to hold people in an incommunicado detention was not a judicial but an executive one. This was a licence to State agents and agencies to do this. Those who were exposed to the activities of the so-called security branch have many stories to tell about our experience at the hands of law enforcement agencies of the Apartheid regime. People like Steve Biko for instance, who died in a jail after being tortured for a long period and whose story is well-known in the whole world, give a good example of the victims of torture that is sponsored, tolerated and encouraged by the State to get the "truth" out of the so-called terrorists. In that climate of violence, intolerance etc., you only had to be black in this country and you only had to belong to certain organisations to be a victim of that level of intolerance. To be a member of a banned organisation was enough to be detained and punished. Violence was indeed a part of the way to deal with social problems. This kind of culture is something that we had to grapple with.

When we came into office, and I think we were very fortunate to have been asked by our people to participate in providing leadership and that very difficult transition, one of the first things we did was to pass a constitution that indeed provided a bill of rights as the corner stone of our system. In terms of the constitutional order, torture, cruel, inhuman and degrading treatment are not to be tolerated, in other words you have the right not to be subjected to those.

Marco Mona has made a very interesting statement: the obvious step from banning torture is to prevent torture. So I may say that in our law, torture is indeed proscribed, nobody is to be subjected to it. But as I said, despite this prohibition it is continuing. Only recently, we concluded a case of some young white officers who had subjected Mozambican illegal immigrants to dog bites. They set a pack of police dogs on them. In the court of law they simply said that they're not the first to do this, that it is part of the culture of this institution, this is how we train these dogs and that they were unlucky to be caught out. At the same time this country was fortunate that they were caught out because it was continuing under the nose of this collective leadership of government. But at least they have been given punishment, whether you call it appropriate or not is neither here nor there, steps have been taken and it's known that for a change you have a government that does not any longer tolerate this kind of behaviour. The government would not want to shield them, would not like to say that this was the right way to treat illegal immigrants. The government said that the law takes its course against them.

While this horizontal problem of torture is primarily experienced in the townships, the little areas of depression where millions of people are living, one also finds similar forms of problems in areas that are much more fortunate than those. A classical example is that of a girl who was suspected of shop-lifting. Instead of being arrested at the nearest police station, she was actually painted white. This, for me, is a form of torture and horror, and it's happening on a person-to-person basis with no State involvement.

There was another interesting case of a person who was completely homeless, lying in a street corner somewhere, not knowing where his next meal was coming from. The police see this chap, who is completely harmless. One of the police officers comes out of the car, dowses him with metholated spirit and then sets him alight with a cigarette lighter. The police officers' defence in court was that all this was only a joke, that he knew that the cigarette lighter was no longer working, but suddenly it worked, and that he didn't have the intention to do him any harm. Well, I don't think that this person would be right in saying that he was acting for and on behalf of the State. It's a person who happens to be a police rogue who is doing what I believe he is used to doing. It's just this time around we got to know his activities. I have to say that he was found not guilty of assault with intent to do grievous bodily harm. Although I would avoid commenting on it, further because of my particular responsibility in the system. Fortunately we didn't stop at the point where we passed a bill of rights, we also established bodies that would help us to deal with the whole of these problems. There is the Human Rights Commission or the Independent Complaints Directorate (ICD), which is primarily focusing on the transgression of the law by police officers, because you see we would never expect them to investigate themselves. In your own company, if you run a company, you don't investigate one another on cases of tax evasion or what ever else. So you'd never expect the police to do a thorough investigation as far as police violation of the laws and the human rights are concerned. So, it helps us tremendously, we have a lot of police officers who have been punished indeed as a result of the thorough investigation by the ICD, which is a very important element in our system.

We are one of the countries that have signed and ratified the UN Convention against Torture, which has been referred to by Marco Mona. Although, I must confess that we haven't yet been ready to make it part of our law. In the meantime problems such as the ones we are talking about are dealt with under our Common law, so indeed it would be assault, we don't call "torture", we'd say you assaulted this person.

But I'm sure that we're getting closer to the point where indeed the UN Convention is going to be part of our legislation and therefore we will deal with torture as torture rather than call it any other name.

I must say also, by the way of concluding, that whereas in the past courts would doubt that you were telling the truth if you said "this confession or this admission was extracted through torture, cruel, inhuman and degrading treatment". Today, indeed courts do listen to that story because courts have now woken up to this reality that a whole lot of things may tend to happen when police are doing their work. At times they don't happen simply because of racism.

I was listening to a young police officer who was in trouble recently and he was saying to me: "You know, Minister, my trouble starts with my zeal, I am a zealot against crime. So you give me a criminal who is denying that he did what I believe he did, I get exposed to this problem." That's very interesting. He thinks that he is actually doing the right thing, society must be protected from the activities of this criminal, no matter how he does it, because in his small mind the end is good and it justifies the means. But it's exactly at this point where we as a people have to say no, no matter how glorious the end may be, if the means are not right, you can't say that the end justifies the utilisation of this means. I'm saying that courts are actually now quite alive to it. Although, they've decided that instead of saying that once there is proof that a person was subjected to torture, you exclude the evidence that derives from that, the ill-gotten evidence in other words.

However the law says instead that the court has got to investigate that and come to a conclusion as to whether or not admitting that sort of evidence which was extracted that way would render the trial unfair. So, it depends on the merits and the circumstances of each case, you may find that in one instance a judge says "therefore the whole trial is tainted because of this", but in other instances the same judge may come to a different conclusion. But the long and short of what I'm saying is, now, all of us are paying attention to this. But if

you ask me whether we've moved beyond merely banning it, beyond saying we're intolerant of it, to preventing it, I would say maybe there is a hesitant inclination to move from merely banning it to the direction where we say "this is what we do to prevent it". I have yet to come across education campaigns about this problem. We are still very much dealing primarily with the ones who are caught out, but I want to believe that there must come a point where we can combine prevention with prohibition. It's known that torture is unacceptable.

With those few words it's an honour for me indeed to welcome all of you who have come from abroad to our shores and I have no doubt personally that within the time allocated to this seminar we will learn quite a lot from both your experience and your expertise. We are very much an ally of yours in the war against torture, cruel, inhuman and degrading treatment, and it can be achieved.

Thank you.

B. Background and Workshop Papers

1. Legal measures to prevent torture and ill-treatment

Legal measures to prevent torture and ill-treatment

by MALCOLM D. EVANS,
Professor of Public International Law, University of Bristol, UK

1. The need for a broad spectrum of legal responses

There are very few practices - if any - which are as widely condemned as are acts of torture. The claim that a person is being treated in an inhuman fashion is a claim that no-one feels capable of ignoring and its wrongfulness is easily and intuitively understood. It is also the case that human beings are remarkably resilient and can endure a great deal of physical or mental ill-treatment which is focused on breaking their spirit - but the very same individuals who can bear the extremes of pain with fortitude can also be damaged to their very core by forms of humiliating treatment that degrade them in their own eyes, as well as in the eyes of others. This is a truth which is brought out most clearly in the African Charter on Human and Peoples' Rights, Article 5 of which conceives of torture and ill-treatment as forms of degradation. It is, then, hardly surprising that these three forms of ill-treatment - torture, inhuman and degrading treatment - have been singled out by the international community as wrongs which, when committed by the State, or with the connivance of the State, or in the face of passivity by the State, are not to be tolerated. The lawyer will describe them as non-derogable. They admit of no exception and no excuse.

And yet such practices flourish. There is nothing to be gained by denying that this is so and we diminish ourselves if we yield to the self-delusion that it is otherwise. Of course, the forms and the extent of torture, inhuman or degrading treatment varies greatly from one place to another and from time to time. But there is no country in which unacceptable practices do not occur. Equally, there are no countries in which such unacceptable practices cannot occur. Indeed, there is no fixed and final boundary between forms of ill-treatment which are unacceptable and forms of treatment which are not. In

short, there is not a country in the world which does not have a need to take steps to ensure that existing practices which either amount to ill-treatment, or which permit ill-treatment to occur, cease. Similarly, all countries need to exercise vigilance to guard against the possibility of such practices occurring.

It is, of course, axiomatic that those who are responsible for committing torture and subjecting individuals to forms of ill-treatment are held to account and are properly punished, no matter who they are. However, taking action against those who are responsible for such actions, and holding States to account for such actions when they themselves are or become responsible, is simply not enough to adequately address the problem. What must be sought is not only the outlawry of the practice, but the prevention of the practice. And the deterrence offered by the threat of serious punishment - though obviously of great importance - is not enough. It is comparatively easy - or should be - for a State to live up to its international obligations - both legal and ethical - by punishing those who commit acts of torture or treat others in an inhuman or degrading fashion. It is often less easy for States to accept that it is necessary to respond to the needs of those who have been the victims of such ill-treatment in an appropriate manner.

The most difficult task of all is for the State to accept that it needs to take upon itself the task of prevention. Effective prevention requires intervention to protect those at risk. Rarely can this be done on an individualised basis, though if a specific risk is known, that risk can be averted. The key to preventing torture lies in accepting the need to put in place mechanisms that can lessen the likelihood of torture and ill-treatment from occurring. This is difficult because these mechanisms and procedures can appear onerous, cumbersome and, in the eyes of some, can appear to hamper the work of law enforcement agencies in doing their difficult but vital tasks. The ultimate test of a State's commitment to delivering to those subject to its jurisdiction the human right that "no-one shall be subjected to torture or to cruel,

inhuman or degrading treatment or punishment" is the extent to which it is willing to accept limitations upon the powers of its own officials and will permit necessary intrusions into their powers and prerogatives in the interests of extending a mantle of protection to those who are in a position of weakness and vulnerability, irrespective of who they are or of what they might be suspected of having done. It is only when States can be seen to be addressing torture and ill-treatment in all these ways that it can truly claim to be working towards the realisation of this most fundamental of human rights.

There is, then, a spectrum along which a State can be expected - indeed, must be expected - to take action in combating torture. I am aware that this spectrum is extremely broad: indeed, I would not wish to offer my thoughts on its extremes, for I suspect it is rainbow-like, and the points at which it ends cannot be discerned, let alone described.

This presentation merely identifies a few of the key areas which are so clearly within the spectrum that they cannot reasonably be controversial. Other presentations will explore other elements. All that follows is offered as a primer to the more detailed discussions that are to come.

2. Recognising and reinforcing the prohibition

The prohibition of torture and ill-treatment is now deeply embedded in customary international law, binding upon all States. It is, then, incumbent on all States to respect this in their practice. But States should do more than this and should be seen to reflect the prohibition within their domestic legal order at the highest level, through, for example, constitutional guarantees and domestic bills of rights. But proclamation is itself insufficient, as the international community has itself recognised. In consequence, it has developed two separate

but complimentary approaches: through the development of mechanisms for considering allegations of human rights violations at the international level and for requiring the criminalization of torture at the national level. States should echo this in their own practice in the following ways.

a) Participation and co-operation

Ensure that they become a party to relevant international legal instruments and accord individuals the maximum scope for accessing the human rights machinery that they establish. This would include, as a minimum:

- Becoming a party to the International Covenant on Civil and Political Rights, and the First Optional Protocol recognising the right of individual communication.

- Becoming a party to the UN Convention against Torture, including making the optional declarations under Article 22 concerning the right of individual communication to the Committee against Torture; and for those that currently do not do so, accepting the right of the CAT to act under Article 20 concerning the procedure for in situ visits to States. Those that do accept that procedure should respond in the spirit of co-operation to activities taken in pursuance of it.

- Ratifying the Protocol to the African Charter on Human and Peoples' Rights establishing an African Court on Human Rights, and working in a spirit of co-operation with the Commission and the Court.

- Responding promptly and fulsomely to the UN Special Rapporteur on Torture and offering standing invitations for him to visit.

- Working closely and co-operatively with the Special Rapporteur on Prisons and Conditions of Detention in Africa.

b) Criminalization

States should ensure that acts which fall within the definition of torture (based, as a minimum, on Article 1 of the UN Convention against Torture) are offences within their national legal systems. Moreover, they should ensure that their Courts have the jurisdictional competence to hear cases concerning allegations of torture irrespective of the country in which the alleged torture took place, irrespective of the nationality of the alleged torturer and irrespective of the nationality of the victim. It is also important that such legislation should ensure that:

- There are no exceptions based on notions such as 'necessity' or 'national emergency' or 'public order' or 'ordre public' or 'superior orders'. These are the cracks thought which ill-treatment seeps into general practice.
- The sanctions for torture and ill-treatment reflect the international opprobrium that such practices attract.
- Persons who refuse to obey orders to commit such acts are not themselves subjected to punishment.

3. Implementation of criminal sanctions

Even the most well constructed domestic law criminalizing torture and ill-treatment is practically worthless if it is not used. Indeed, it might be counter-productive. What are torturers to think if they know that what they are doing has been expressly outlawed and is subject to severe criminal penalties - and yet the legislation is still not used in practice? Such a failure could itself be considered to evidence non-condemnation of ill-treatment.

a) Effective investigation and prosecution

Such legislation is likely to be merely symbolic if there are no reliable means by which credible allegations can be investigated or cases properly and effectively presented. In practice, this means that States should ensure that:

- There are readily accessible and fully independent mechanisms to which all persons - irrespective of whether they are currently in detention or not - can bring their allegations of ill-treatment.

- An investigation is initiated whenever persons who claim to have been or who appear to have been ill-treated appear before judicial authorities.

- All such investigations are conducted promptly and impartially and if ill-treatment is found to have taken place, appropriate action is taken against the persons concerned.

- Where prosecutions are brought, it is important that alleged victims, witnesses and those giving evidence are made to feel sufficiently secure so that they may contribute towards the prosecution case without fear.

- Also trials are fair to the accused and that they are not made 'scapegoats' for others.

b) Combating impunity

Even in States which have developed a practice of bringing criminal prosecutions against those who are suspected of committing acts of torture, there may be a reluctance to do so in certain circumstances. In some cases, this reluctance may be quite justifiable but even where this is so there are usually other possibilities which need to be explored. These can include:

- Ensuring that those with operational or political responsibility for acts of ill-treatment are susceptible to legal process.

- Ensuring that there is no de jure or de facto immunity from prosecution for nationals suspected of torture, and that the scope of immunities for foreign nationals be as restrictive as is possible under contemporary international law.

- Ensuring prompt consideration of extradition requests from third States in accordance with international standards.

- Ensuring that rules of evidence properly reflect the difficulties of substantiating allegations of ill-treatment in custody.

- Ensuring that other appropriate action (civil, disciplinary or administrative) be taken where criminal charges are unlikely to be sustained because of the high standard of proof rightly required.

4. Responding to the needs of victims

The prosecution and punishment of those responsible for torture and ill-treatment is a vital component of the realisation of the human right. And where the human right not to have been subjected to such ill-treatment has been breached, it can also form an important part of the response of the State to the wrong done to the victim, and his or her family and community. But it is only a part of this. Full reparation for the wrong identified in and through the punishment by the State of the offender remains the responsibility of the State. Indeed, the obligation upon the State to offer reparation to victims exists irrespective of whether a successful criminal prosecution can or has been brought and flows from the very fact that there has been a breach of the State's obligation to ensure that no-one shall be subjected to torture or ill-treatment as a matter of human rights law. Thus States should ensure that all victims:

- are offered appropriate medical care.
- have access to appropriate social and medical rehabilitation.
- are provided with appropriate levels of compensation and support.

There should also be a recognition that the notion of 'victim' can extend beyond the person immediately concerned and embrace, for the purposes of rehabilitation, family and communities which have also been affected by the ill-treatment received by one of its members.

5. Preventive measures

As was stressed at the outset, any adequate response to torture and ill-treatment requires not only responsive and remedial action, but also preventive measures. The forms that preventive measures can take are almost limitless, but I wish to focus here on a small range of legal measures the efficacy of which in preventing ill-treatment from occurring is well-attested. It is important to note that although many of these may not seem at first to have a great deal to do with torture or torture prevention, narrowly understood, their prime purpose is to construct a system in which the likelihood of ill-treatment is reduced. They will not 'prevent' in the sense of making torture or ill-treatment *impossible*. They seek to prevent by reducing the opportunities, lessening the temptations and increasing the risk of discovery.

a) Basic procedural safeguards for those deprived of their liberty

All persons who are, de facto, deprived of their liberty by public order or authorities should have that detention controlled by properly and legally constructed regulations. Such regulations should provide a number of basic safeguards applicable from the very outset of detention, and include:

- The right that a relative or other appropriate third party be notified of the detention.

- The right to an independent medical examination.

- The right of access to a lawyer.

- The right for the notification of such rights.

- That such rights should not be illusory and exist in theory only.

b) Ensuring the integrity of the pre-trial process

The above safeguards offer the opportunity for external access to those in detention and for scrutiny of the manner in which they have been and they are being treated. Such measures must be complemented by further safeguards concerning their treatment and also regarding the means by which they can challenge the lawfulness of their detention. Such measures include:

- Ensuring that persons are aware of the reasons for their detention and charges brought against them.

- That proper records of their treatment whilst in custody are kept and can be consulted.

- That interrogation procedures are appropriately constructed and are adhered to.

- That persons detained are brought promptly before a judicial authority and can make representations or be represented in such hearings.

- That detainees can challenge the legitimacy of their detention.

c) Equipping the law enforcement agencies for their task

At the same time, it must not be forgotten that those who are expected to enforce the law are themselves in need of assistance in carrying out the difficult and often dangerous tasks that are expected of them. It is, frankly, wholly unrealistic to expect those who are entrusted with the policing of society to do so in a manner which fully reflects these requirements unless they are given the proper training and resources, and that their operations are undertaken against a properly constructed set of assumptions. Human rights approaches to torture prevention therefore also indicate the importance of ensuring:

- That law enforcement officers receive appropriate training.
- That law enforcement agencies are properly resourced.
- That policing functions are separated from military functions.
- That codes of conduct and ethics be established and promoted to inform, guide and underwrite best practice in the realisation of these functions.

6. Conclusion

It must be stressed that the suggestions made above are intended merely to indicate some of the areas that need to be considered in constructing a holistic response to the obligation imposed by human rights law that no-one shall be subjected to torture or to inhuman or degrading treatment or punishment. It is certainly not comprehensive and the matters touched upon themselves brush over many crucial matters of detail. It would, however, be quite improper to go any further at this stage, since it must be for this workshop to add substance and detail to these descriptions of legal methods of addressing torture. My hope is simply that they will be taken as ideas as to matters to be explored.

I should like to conclude with three related observations:

The first is that the practice of torture and ill-treatment is not to be equated with some form of "illness" or "disease" that can be eradicated by prescribing the right form of "treatment". Rather, it is a temptation to which all of us can succumb.

The second is that there is no easy solution, but it can be tackled by a combination of measures. It is often the case that the most effective means of securing the enjoyment of the right does not lie in undertaking dramatic gestures or high-profile initiatives, although these have their place. Rather, success comes from painstaking attention to the minutiae of prevention, prosecution and reparation.

Finally, and consequently, it is not realistic to expect States to respond in full to the challenge in a single measure. The demands of realisation of the right are far too complex for this to be a realistic expectation. Rather, what is vital is that a series of measures are devised and implemented, complementing each other and deepening and strengthening the resistance of the system to the incidence of torture and ill-treatment.

In short, what is needed is a sustained campaign based around a well-conceived understanding of how to address the issue of torture - and that is what we are here to do.

Legal measures to prevent torture and ill-treatment,

by GUIBRIL CAMARA,[10]
Member of the UN Committee against Torture

Introduction

On 18 May 2001, the closing date of the 26th session of the Committee against Torture, there were 124 States Party to the Convention against Torture, Inhuman and Degrading Treatment.

There were 30 African States that had ratified the Convention.

Amongst these 30 States, only 10 had acquitted themselves of the first obligation, that is, the presentation of an initial report.

Only 7 States have made declarations according to Articles 21 and 22 of the UN-CAT. According to Article 21, any State Party can declare that it recognises the competence of the Committee to receive and examine communications in which a State Party alleges that another State has not complied with its obligations regarding the Convention. Nevertheless this rule was never applied so it is not worth dwelling upon it.

However, this is very different from Article 22 which is the master key of the protection mechanism of the Convention, where any State Party can declare at any time that it recognises the competence of the Committee to receive and examine communications from or on behalf of individuals within its jurisdiction, who allege being victims of a violation from a State Party for not making such declaration.

10 Mr. Camara could not attend the workshop but kindly sent us his contribution. His paper has been translated from French by the APT.

1. General Measures related to the implementation of the UN-CAT

As a matter of fact, one can say that every effort to eradicate torture and ill-treatment in Africa starts with the adoption of the following measures:

a) The ratification of the Convention by the States that have not yet done so, about 20 of them.

b) The presentation of the initial report as according to Article 19 of the Convention. States Parties present to the Committee, through the UN General Secretary, reports on measures taken to give effect to their commitments to the Convention, within a year from the date of entry into force of the Convention for that country. However, as we said earlier, amongst the 30 African States that have accepted the Convention, only 10 have complied with this obligation, the others did not really follow up, the delay for presenting the initial report being from one year –for those who ratified in 2000– to thirteen years for one State party which should have presented its initial report on 17 December 1988.

c) Often, it seems as if the States have a lack of necessary competence to establish the initial report according to the directives of the Committee. More and more States ask for the help of the international community. That was the case of the countries of the former Eastern block and some African countries (Benin, Zambia) that were able to present their report during the last session of the Committee. We must encourage African countries to do so.

d) African States should, when ratifying or acceding to the Convention, make declarations in favour of Articles 21 and 22, without making any reservation to Article 20 that authorises the CAT to investigate privately when it receives serious indications that torture is used in a State Party.

2. Proposals for Implementing the UN Committee against Torture's recommendations

The examination of the recommendations of the Committee, after the examination of the African States' reports between 1993 and 2001, shows that, under different forms, the same obstacles to an effective application of the Convention always come up; this allows it to be known which legislative, administrative and other measures should be taken.

The most frequent recommendations concern: the formal prohibition of torture; the full criminalization of torture; the exclusion of any justifying causes of torture, especially exceptional circumstances or the order from a superior; universal jurisdiction; the consideration of complaints of torture, and the reparation and rehabilitation of victims of torture; the non-validity of proof obtained through torture except against the perpetrator of torture; the prohibition of any other acts such as ill-treatment, inhuman and degrading treatment.

From these various recommendations, some efforts should be suggested in some areas:

a) The Committee recommends to the States Parties to state as firmly as possible the prohibition of torture. This prohibition can preferably be expressed in the Constitution or in a law. However, some Constitutions, without targeting torture, assert the dignity of the human being, his inviolability, the obligation to respect him, and to protect and give him a right to personal integrity; the essential being that the fundamental law serves as a basis for the proscription of torture.

b) Article 1 of the Convention provides:

1. "As to the means of this Convention, the term "torture" means any act by which pain or suffering, 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 any 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 and suffering arising from, or 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".*

The Committee recommends to States Parties to review in their penal legislation the application of Article 1, which is the only way for States Parties to conform with their obligations under Articles 2,4,5,6, and 7 of the Convention.

But beyond the African States Parties to the UN-CAT, the other African States could be urged to put in their domestic law the terms of Article 1, which is currently the text that most completely criminalises torture.

c) It is necessary, to reduce the risks of torture and impunity, to exclude acts of torture protected by law, such as superior order. To do so, express provisions must be included within the penal legislation.

d) African States must introduce universal jurisdiction in their legislation, in accordance with Articles 5 and 7 of the Convention; as a result, perpetrators of such acts will not be able to find protection anywhere in Africa to avoid judicial pursuits.

e) Teaching and training on the prohibition of torture and cruel, inhuman and degrading treatment should be developed in the whole continent.

f) Rules regarding investigations and detention should be made according to universal principles (delay of detention, maximum of 48 hours, assistance of a lawyer, access to a doctor, etc…); these will lead to sanctions if not respected.

g) The victims of torture must be able to complain to an independent organ and gain justice, reparation and rehabilitation for the violation.

h) To reduce and eliminate acts that are not torture according to the Convention, but are cruel, degrading or inhuman treatment, there must be a focus on the administration of prisons which must be inspired by the minimum rules of the UN for the treatment of detainees, adopted by the first UN Congress for the prevention of crime and treatment of offenders, in Geneva, 1955, and approved by ECOSOC, 31 July 1957 and 13 May 1977.

i) All these measures presume the existence of a strong and independent judicial system, including an independent Bar.

   To succeed, judicial systems should be organised according to the fundamental principles regarding the independence of the Judiciary, basic principles regarding the role of the Bar and the main principles applied to the role of magistrates adopted by the seventh (1985) and eighth (1990) UN Congress for the prevention of crime and treatment of detainees.

Measures for the prevention of torture in line with the struggle against impunity

by MABASSA FALL,
International Federation for Human Rights (FIDH)

The act of torture is a crime unanimously recognised by the international community and the international instruments related to the protection of human rights, and "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".[11]

Faced with repeated attempts by a large number of States to assure the greatest impunity possible – the exemption of punishment or of penalty through mercy or immunity - for the perpetrators of serious violations of human rights, it is imperative to reflect on new methods and new measures of action to steer clear of States' desires to absolve the perpetrators of the most odious crimes.

1. Prevention of and struggle against the impunity of crimes of torture in international law

Torture is unanimously condemned by States. Numerous international instruments are devoted, without condition or reserve, to its prohibition.[12] The assembly of texts tend to confirm the universal character of this prohibition, which thus takes the character of an

11 Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

12 See:
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Article 5 of the Universal Declaration of Human Rights, 1948,
www.un.org/Overview/rights.html
Article 7 of the International Covenant on Civil and Political Rights, 1966.
www.unhchr.ch/html/menu3/b/a_ccpr.htm ... / ...

imperative norm in international law defined in terms of Article 53 of the Convention of Vienna in 1969 on the right of treaties: "[...]a peremptory norm is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted [...]."

The International Court of Justice, in an adopted obitur dictum of the Case of 5 February 1970 (Barcelona Traction Case), confirms this approach by specifying: *"seeing the importance of human rights, all States can be considered as having a legal interest that these rights be protected."* Also, in the Furundzija Case, rendered in 1998, the Trial Chamber I of the International Criminal Tribunal for the former Yugoslavia confirms the universal character of the prohibition against torture. Moreover, the practice of torture is one of the acts condemned by the Statutes of both International Criminal Tribunals and of the International Criminal Court as a crime against humanity or a war crime.

The unanimous prohibition of torture does not allow infringement regarding the prosecution of perpetrators of this crime, whatever the nationality or the official quality of the perpetrator. Therefore, the application of the principle of **universal jurisdiction** is one of the essential actions in the struggle against impunity. This principle makes provision for the possibility and even the obligation for a State to initiate prosecutions, and if need be, to proceed with the arrest of a perpetrator on its territory suspected of serious violations of human rights, even if the crimes were committed in another State against foreign victims and by a foreigner. On this basis, the Belgian

12 See:
Article 3 of the European Convention on Human Rights, 1950. www.hri.org/docs/ECHR50.html
Article 5 of the Inter-American Convention on Human Rights, 1969. www.oas.org/juridico/english/treaties/b-32.htm
Article 5 of the African Charter on Human and Peoples' Rights, 1981. www.achpr.org
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987. www.cpt.coe.int/en/refdocs/ecpt.htm

law of 1993 which fully sanctions this principle of universal competence, is an example for all the countries of the world to follow because it furnishes a useful model to fight impunity.

Certain conventional measures oblige the States to "**extradite or punish**" the perpetrators of the most serious crimes while also struggling against impunity. One finds this mechanism in the numerous international instruments relating to the protection of human rights, and notably in Article 7 of the UN-CAT.

The principle, previously seen as absolute, of the immunity of Heads of State and high officials is rendered null by certain measures of international law such as those embodied in the statutes of both International Criminal Tribunals for the former Yugoslavia and Rwanda as well as that of the International Criminal Court, but also in Article 4 of the Convention against Torture. The arrest of General Pinochet puts in practice the limits of the principle of immunity. Today, the hope of being able to try Heads of State responsible for the most serious crimes is real.

Therefore, the international norms institute general principles of law favouring the struggle against immunity for the perpetrators of the most serious crimes. It is above all necessary to institute mechanisms of control and penalty against its possible exercise to national and international plans.

2. Measures for control and sanction of violations

The willingness of governments to struggle against the impunity of perpetrators of acts of torture is not always obvious. Torture is still practised in numerous countries. It is then necessary to establish true mechanisms of independent control in order to throw light on the existence of these practices, but also to put in place possibilities of judicial recourse for the victims of torture.

In the first place, it is important to create **local organs of surveillance**, independent, likely to declare that acts of torture were perpetrated, to make recommendations to the governments concerned, and to provide judicial aid for the victims. Similarly to the United Nations Special Rapporteur on Torture, the European Committee for the Prevention of Torture and the United Nations Committee Against Torture, these organs have to be able to effectuate investigations of the police stations, prisons, and other centres of detention and to establish reports on the situation of human rights of persons deprived of freedom. The **international organs of control** have to also be able to alert the international community of the existence of practices of torture in certain countries.

Secondly, while the international mechanisms in the fight against impunity for crimes of torture described above would be generally considered as customary rules of international law, thus applicable to all States, it is important to **promote the ratification of international and regional agreements prohibiting torture**.

In addition to their ratification, it is **necessary that the governments publish and adapt these agreements**, including the measures of universal jurisdiction, in their internal law in order to fight against the impunity of the perpetrators of acts of torture. It is also essential that the magistrates and judicial auxiliaries benefit from training on the practice of the conventional measures, in order that the international judicial instruments find, at the national level, an effective application. It is by the existence of the two conditions that the victims would be able to take legal action and to assert their rights before the tribunals.

The importance, while sometimes not legally mandatory, of laws of adaptation was emphasised notably during the judicial procedure in Senegal against Hissène Habré, dictator of Chad between 1982 and 1990. Indeed, on 20 March 2001, the Senegalese "Cour de Cassation", the territory where the dictator sought refuge, declared that it did not have the competency to hear the case because

"Senegal, while having ratified the Convention against Torture, did not adopt the necessary texts for application." However, as seen previously, the Agreement Against Torture proclaims the principle "extradite or punish." In addition, Article 27 of the Vienna Convention of 1969 on the right of treaties suggests that "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty".

In addition to blocks due to the non-application of international agreements proclaiming the outlaw of torture, the governments sometimes put in place legal mechanisms favouring the impunity of the perpetrators of acts of torture.

Thus the existence of **laws of amnesty** promulgated by the governments without any popular consultation, such as in Mauritania in 1993, more recently in the Democratic Republic of Congo with the Accords of Lusaka or still in Sierra Leone, **impedes the judgement of the perpetrators of acts of torture**. By these laws, the victims are often frustrated and weakened. They do not generally have another alternative than continuing their daily life with their sufferings, most often regularly crossing paths with their torturer without any possibility of action.

The establishment of commissions of national reconciliation is also perhaps problematic. Many countries have tried, and some have succeeded, to carry out a democratic transition, in concluding a sort of preliminary pact, promising not to persecute the responsible members of the dictatorship in exchange for their retreat from the political arena and putting in place, as soon as possible, a State of law. At first experienced and accepted as the only possible way to put a country on the road to democracy, this step cannot sentence to oblivion the evidence of the suffering endured. There cannot be lasting national reconciliation without justice, which is the necessary way to establish, in the eyes of all, the truth of the country's sad history and that of those who were the instigators. Nevertheless, the task of reconciliation

chosen by South Africa, for example, demands a review of the difficult relationship between peace and justice. A specific commission, which even entitles itself "Truth and Reconciliation" and demonstrates the ambition of reconciling the irreconcilable, is designed to obtain confessions and repentance, to clarify the crimes and the disappearances, to identify those responsible for odious acts, thus responding to essential needs of the victims.

Faced with governmental obstacles against the proper administration of justice, it is necessary to promote the enactment of international judicial norms, permitting the punishment of acts of torture perpetrated or encouraged by the governments, notably by the **ratification of the Statute of the International Criminal Court and the effective creation of regional courts of human rights** with the possibility for the victims and the organisations for the defence of fundamental rights to lodge complaints against acts of torture.

3. Recommendations

So that the perpetrators of serious violations of international humanitarian law and human rights are not able to escape their individual penal responsibility, the following recommendations are made:

TO STATES:

- Ratify the international instruments relating to the prohibition of torture and ensure their complete application through integration into national laws, including the norms of universal jurisdiction and introduction of the mechanism to "extradite or punish."

- Ratify quickly the international instruments especially those regarding the creation of judicial organs such as the Statute of the International Criminal Court and regional Courts for human rights, notably the African Court of Human and Peoples' Rights.

- Render illegal all measures of amnesty or of immunity for the perpetrators of acts of torture.

- Do not put in place commissions of "reconciliation and truth" unless they respond to the wishes of the victims and to a large national consensus.

- Guarantee the proper administration of a judicial system independent from the executive power.

- Make sure that the national legislatures offer to NGOs the right to lodge complaints without being opposed by objections of inadmissibility founded on the absence of capacity or interest to act.

- Accept the presence on their territory of independent international organs of control and surveillance against practices of torture and put in place national mechanisms (access of NGOs to places of detention, regular admittance of a doctor, etc.).

TO CIVIL SOCIETY:

- The NGOs have to integrate into their statutes the possibility of lodging complaints in their own name or for others.

- The organisations for the defence of human rights have to serve as intermediaries for the diffusion and the popularisation of these international instruments and to work for the protection of the victims, helping them to follow the legal steps.

2. Control measures to prevent torture and ill-treatment

Establishment of regulations for the treatment of persons deprived of their liberty from a policing perspective

by DR. TERTIUS GELDENHUYS and ANTOINETTE BRINK,
South African Police Services (SAPS)

1. Introduction and background

The right not to be tortured is entrenched as a fundamental right in Chapter 2 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) which is the highest law of the land. The fundamental right of an individual to be protected against torture is widely accepted as a customary rule of international law. With the signing of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) on 29 January 1993, South Africa explicitly acknowledged the prevention of and protection against torture as part of international law. By signing the Convention, the South African Government also undertook to work towards ratification, thereby binding the State to adhere to the Convention. This required government to work actively towards the prevention of torture and to protect people against any act of torture.

In terms of the Convention, each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

In the light thereof, the office of the National Commissioner requested that the approach of the South African Police Service (hereinafter referred to as "the Service") towards interrogation methods, detention, etc., be re-evaluated and that a policy document be drawn up to ensure the prevention of torture and other cruel, inhuman or degrading treatment of persons in the custody of the Service.

The policy document on the Prevention of Torture and the Treatment of Persons in Custody of the Service (hereinafter referred to as "the

Policy") was subsequently developed and approved by the Minister's Committee for Safety and Security on 19 May 1998 as the official policy of the Service.

2. Purpose of the Policy

The Policy is aimed at :

(1) preventing the torture (including cruel, inhuman or degrading treatment) of persons in the custody of the Service; and

(2) protecting our members against false allegations of torture.

This purpose is achieved by creating a system of checks and balances throughout a person's custody in the Service. The Policy places certain obligations on members while they are working with persons in the custody of the Service. These obligations serve as controlling mechanisms to ensure that the human rights of these persons are respected while they are in the custody of the Service. At the same time, the system ensures that the member and the Service will be protected against false allegations of torture and ill-treatment of persons in custody. The Policy was subsequently incorporated into various standing orders which came into effect on 1 July 1999.

The Policy further includes guidelines that must be followed concerning the interviewing of a person in custody. In this regard, the Service is currently in the process of developing a system providing for the video and audio recording of interviews with suspected or arrested persons. A pilot project was launched in this regard at the offices of three Detective Units responsible for investigating serious violent crimes. Once this project has been completed, it is envisaged that the Service will develop the necessary infra-structure to support the introduction of such systems throughout the Detective Service within the Service.

3. Important aspects of the Policy

3.1 Notice of Constitutional Rights and Custody Register

The Policy provides that important information be recorded in a newly developed Notice of Constitutional Rights and a Custody Register. These documents were developed after international research had been undertaken with regard to the prevention and prohibition of torture and the treatment of persons in custody.

The research, which was also based on the Reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), suggested that certain information be specifically recorded to ensure that a person has been informed of his or her constitutional rights (i.e. the Notice of Constitutional Rights) and to ensure that the police has given the person in custody an opportunity to exercise those rights, a separate register (the Custody Register) was developed.

The Notice of Constitutional Rights, which informs a person in custody, when arriving at a police station, of his or her rights in terms of section 35 of the Constitution, 1996 (Act No.108 of 1996) (hereinafter "the Constitution, 1996), was thus developed.

The main objectives of the Notice of Constitutional Rights are:

- to implement a system by means of which every person who is arrested by the Service will be provided with a written notice setting out all his or her fundamental rights, as provided for in the Constitution of the Republic of South Africa, to enable the person to exercise those rights and, in so doing, protect himself or herself from wrong treatment by the Service; and

- to empower a person in the custody of the Service to take effective action to ensure respect for his or her fundamental rights by members of the Service and to obtain redress in those instances in which these rights are violated.

To give effect to the above, every arrested person receives, upon arrival at a police station, a written notice setting out his or her constitutional rights. Such person is requested to sign the Notice to acknowledge that his or her constitutional rights have been fully explained to him or her. The original Notice is handed to the person in custody to be retained by him or her throughout his or her period of detention. The Notice informs the person in custody that these rights are continuous rights which may be exercised at any point in time during his or her period of detention. The first copy is filed in the case docket which is submitted to court. The second copy remains in the book as a control copy which verifies that a Notice was issued to every person who is admitted into the custody of the Service.

The Custody Register, which substituted the Cell Register, and which is kept at each police station, ensures that every action taken by a member regarding the person in custody is recorded by the Community Service Centre Commander in the Custody Register or, where appropriate, in the Occurrence Book. This Register serves as a control mechanism to ensure that a person is given an opportunity to exercise his or her constitutional rights.

The Policy, together with the above-mentioned Notice and Custody Register, were implemented for a trial period at three police stations before implementation to ensure that it is practical, viable and implementable.

3.2 Electronic recording of interviews of persons in custody

The Policy also includes guidelines that must be followed concerning the interviewing of a person in custody. The Service is currently in the process of developing a system providing for the video and audio recording of interviews with suspects or arrested persons. A pilot project was launched in this regard at the offices of three Detective Units responsible for investigating serious violent crimes. Once this project has been completed it is envisaged that the Service will develop the necessary infrastructure to support the introduction of such systems throughout the Detective Services within the Service.

4. Process followed to achieve the aims and objectives

4.1 Re-evaluation of the existing approach of the Service and the development of the Policy

Firstly, the approach of the Service towards interrogation methods, detention, etc., was re-evaluated and the Policy was developed.

4.2 Implementation of the Policy for a trial period

Secondly, the Policy was implemented at three police stations to determine its practicability and then refined.

4.3 Communication strategy

A communication strategy was developed to communicate publicly, as well as internally, key elements of the Policy. The communication strategy formed an integral part of the implementation of the Policy. The communication strategy inter alia provided for the following:

4.3.1 Website on the Internet

A document, containing key elements of the Policy, was placed on the Website to communicate publicly (both locally and internationally) that the Service has adopted a Policy to prevent torture.

4.3.2 SAPS-Bulletin

To ensure that all members were informed that the Service is committed not to torture and to actively prevent torture, a document, containing the key elements of the Policy, was published in the SAPS-Bulletin. The SAPS-Bulletin is included in the salary advice of all personnel of the Service, thus members and civilian personnel.

4.3.3 Servamus

An article, which explained the need for such a Policy and the implications thereof, was published in Servamus, a policing magazine.

4.3.4 Orders and instructions

The Policy was incorporated into Standing Orders (the standing operating procedures for the Service) and came into effect in June 1999.

4.3.5 Information sessions

Information/Training sessions were presented to all station commissioners, area-training officials and legal officials within the Republic (Train-the-Trainer sessions). The purpose of these sessions was to sensitise the station commissioners regarding the Policy and its importance, as its successful implementation depended to a large extent on the station

commissioners' positive attitude towards it. These commanders were responsible to disseminate the information to their subordinates.

Feedback from these Information/Training sessions may be summarised as follows:

(a) 94,26% of the members attending the information sessions indicated that, as a result of the information that they received during these sessions, they will indeed modify the manner in which they are performing their functions relating to persons in custody.

(b) 97,02% of the members indicated that they are, as a result of the Policy and information sessions, empowered to exercise their police powers in a more efficient and effective manner.

(c) 97,03% indicated that the information sessions were very valuable and effective to convey the introduction of the Policy.

The conclusion that can be drawn from an analysis of the evaluation questionnaires is that the purpose of these information sessions, namely to sensitize the station commissioners about the Policy and its importance, has indeed been achieved and the station commissioners displayed an overwhelming positive attitude towards the implementation of the Policy.

4.3.6 Press Conference

A Press Conference was held by the Minister for Safety and Security whereby the Policy was formally introduced to the public at large.

4.4 Training of members

A training manual was developed, accredited and registered on the Training Administration System to ensure uniform training on this Policy throughout the Service. An integrated training approach was followed whereby training regarding the Policy was included, inter alia, in the following Sub-Programmes:

(a) the Basic training curriculum;

(b) all Station Commissioners' training programmes;

(c) all in-service training programmes; and

(d) the Human Rights and Policing Education Programme. This programme is specifically aimed to train 120,000 police officials through 3,000 workshops ending in July 2003.

These training sessions focus on the method of investigations and interrogations and how a new approach to investigation and interrogation will remove the temptation to torture a person in order to get information.

4.5 Monitoring

The Standing Orders compel a member to report any incident of torture and provide for a process to be followed upon receipt of a complaint of torture. In terms of the Policy, as embodied in the Standing Orders, no member of the Service may torture any person, permit anyone else to do so or tolerate the torture of another by anyone. The same applies to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. Any form of torture is regarded in a very serious light and must be regarded as serious misconduct. A commander who receives a complaint must conduct a proper investigation and inform the complainant of his or her right to have the

matter referred to the Independent Complaints Directorate for investigation.

The Independent Complaints Directorate (ICD) has been established and empowered to inter alia investigate complaints of torture. This is an independent mechanism under civilian control established in terms of section 50 of the South African Police Service Act, 1995 (Act No. 68 of 1995). This ensures that complaints against the police in South Africa will be investigated by a body outside police command structures which may demand co-operation from the police in its investigations. The main objective of the ICD is to ensure that complaints in respect of criminal offences and misconduct allegedly committed by members of the Service are investigated in an impartial, effective and efficient manner.

After completing its investigation, the ICD may submit the results to the Director of Public Prosecutions for his or her decision whether to prosecute or not and may make recommendations to the Service, the Minister or to the relevant Member of the Executive Council in a province. The Executive Director of the ICD must submit an annual report to the Minister which must be tabled in Parliament within 14 days of its submission and may, in addition, submit a report at any time when requested to do so by the Minister or Parliamentary Committees.

5. Results / benefits

From statistics gathered from the ICD it is clear that alleged cases of torture within the Service have been reduced more than 50% since the coming into operation of the Policy during 1998.

Other benefits of this Policy include the improvement of the skills of members of the Service on how to treat persons in the custody

of the Service in a manner that would ensure that evidence obtained during the investigation into the offence will be admissible as evidence in a court of law. The long term benefit of this project will be to increase professionalism in the Service thus resulting in more effective policing. The external benefits of this Policy relate to the community. The confidence of the community that policing is in the hands of a competent and professional police service will increase. It will further result in the increased effectiveness of the criminal justice system as a whole.

6. Proposed Guidelines for the Establishment of Regulations for the Treatment of Persons deprived of their liberty by organisations such as Police Services, Correctional Services, etc.

The following guidelines may be followed by any organisation which wishes to establish regulations for the treatment of persons deprived of their liberty:

- Re-evaluation of existing standing procedures and the development of a Policy by means of extensive research regarding the specific environment.
- Implementation of the Policy for a trial period to ensure practicability.
- Incorporation of the Policy into applicable standing procedures.
- Implementation of the Policy by means of an extensive communication strategy.
- Integrated training approach which focuses on the method of investigation and interrogation and how proper investigation and interrogation will remove the temptation to torture.

- Ensuring that proper monitoring and enforcement mechanism are established, both internally and externally (i.e. an independent monitoring mechanism).

- Assessment and review of the Policy on a regular basis to ensure enforceability.

Establishment of effective national visiting and other control mechanisms

by PROF. RENATE KICKER,
Member of the European Committee for the Prevention of Torture (CPT)

Introduction

The notion of *human dignity* describes a basic value recognised by the international community as a fundamental principle which has to be protected without any restrictions. Acts of torture and inhuman and degrading treatment or punishment of people deprived of their liberty by a public authority are seen as one of the most serious violations of the human dignity of both, the victim as well as the offender, and are prohibited by international law and even constitute jus cogens. This prohibition is implemented and guaranteed through the principle of universal jurisdiction which is laid down in the United Nations Convention against Torture and obliges States to prosecute any torturer under the rule dedere aut iudicare. However, a repressive judicial procedure becomes effective only when a human rights violation has already been committed. The protection of the human dignity, therefore, demands the prevention of human rights violations of detained persons in the sense of creating a *culture of humane detention*.

1. The project of a universal visiting system to prevent torture and ill-treatment:

The idea of establishing a universal visiting system for the prevention of torture and ill-treatment of persons deprived of their liberty by a public authority dates back some 30 years. It started with Amnesty International's first world-wide campaign against torture in the early 1970s and is linked with the name of the Swiss banker Jean-Jacques Gautier, the founder of the former Swiss Committee against Torture, today known as the APT. The visiting system of the International

Committee of the Red Cross (ICRC) served as a model and a first draft of an international system of visits of places of detention with a preventive character was proposed to the UN Commission on Human Rights as an Optional Protocol to the UN Convention against Torture. This document, known as the Costa-Rica Protocol, has been discussed and further developed by a working group since then, but has not been accepted and adopted by the member States of the UN. The core idea of this system is to establish a Sub-Committee to the UN Committee against Torture, composed of experts with the mandate to visit all the places of detention in member States and to make recommendations for improvements. The whole system has been rejected by certain States or groups of States mainly because of its potential infringements on national sovereignty. To recommence the discussion, a new proposal has recently been submitted to the Human Rights Commission by Mexico. This draft foresees the establishment of national visiting systems, which would be supervised by an international expert body, namely a Sub-Committee to the UN-CAT. Personally, I think that this new proposal is much more likely to be accepted world-wide and it can also be effective in terms of preventing ill-treatment.

I suggest that support of the development of a universal system of preventing torture be included in the plan of action for the prevention of torture and ill-treatment in Africa.

2. The European visiting system to prevent torture and ill-treatment

While at a universal level a system of preventive visits has not yet been accepted, the whole idea has already found its realisation at European level. Within the framework of the Council of Europe, the European Convention on the Prevention of Torture and Inhuman and Degrading

13 www. cpt.coe.int/en/refdocs/ecpt.htm

Treatment or Punishment (ECPT)[13] was adopted in 1987 and has so far been ratified by 41 member States of the Council of Europe. This convention established the European Committee on the Prevention of Torture (CPT), composed of a number of experts equal to the number of member States. This international expert body with a permanent secretariat in the Council of Europe became operational in 1989.

Two aspects are essential for an understanding of the system laid down in this European Convention. First, it is not a repressive judicial system that is merely applied after the human rights of individuals have been violated. On the contrary, it is a system that aims at preventing human rights violations in special situations where there is a risk of ill-treatment, namely in places where people are kept in detention against their will. Second, the system is based on visits that closely follow the procedure and methodology developed and carried out by the ICRC. Therefore, the CPT's working methods involve starting and continuing dialogues with each of the contracting parties according to the main principle of co-operation. In addition, the rule of confidentiality is laid down as the basis and precondition for successful work. Confidentiality is lifted as soon as the government concerned authorises the publication of the CPT's findings or if the Committee itself, in the face of serious lack of co-operation from the government's side, makes a public statement. So far this has happened only three times as the CPT uses this power as a last resort; two public statement were issued vis à vis Turkey and one against Russia concerning the situation in Chechnya.

The mandate of the CPT is to visit places of detention of all types in member States to see how people deprived of their liberty are treated and, if necessary, to recommend improvements. The CPT's role is essentially preventive in nature, its main purpose is to forestall torture, inhuman or degrading treatment, or punishment. To fulfil that role, the Committee must explore a wide range of issues in order to assess not only whether there is an imminent risk of ill-treatment but also

whether conditions or circumstances exist which could degenerate into torture. These issues include the rights possessed by persons deprived of their liberty, custody and interrogation procedures, disciplinary procedures, avenues of complaints, the physical conditions of detention, regime activities, health care and standards of hygiene. Furthermore, these issues must be viewed both individually and cumulatively.

The CPT may organise periodic or regular visits and other visits, if it deems it to be necessary. The Committee notifies 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 where people are detained involuntarily by a public authority. In its practical work the CPT establishes the situation of detainees through a variety of means, among them discussions with the representatives and staff of the institution concerned and, first and foremost, through private interviews with the detainees or any person who might be able to supply relevant information. A thorough examination of the law and instructions governing the proceedings in the respective institutions, the registers and the medical files help to complete the information necessary to judge the detention conditions. If the conditions in general or of individual detainees are found to be unsatisfactory, the CPT recommends how such a situation could be improved or should be regulated or conducted. This is done in form of immediate observations given by the head of the delegation to the director of the institution at the end of a visit and these are then repeated to the governmental representatives before the delegation leaves the country. A comprehensive written report is finally submitted to the government with a list of recommendations, comments and requests for further information. In this report the CPT requests the government to respond to the CPT's findings and to confirm that measures have been taken in response to the recommendations made. The CPT's report and the State's response may then be published if the State concerned authorises the publication, which has already become the rule. Between periodic visits and ad hoc visits the CPT tries to stay in contact with the State to create an ongoing

dialogue for achieving improvements in the situation of detained persons.

In the CPT's practice, standards have been developed progressively with respect to the places visited. In the beginning, while undertaking the first round of periodic and ad hoc visits the CPT concentrated on police stations and prisons. During the second round emphasis was placed on the detention situations of foreigners under the aliens legislation and consequently airport detention facilities were visited. There were some adverse opinions claiming that these places did not fall under the CPT's mandate as persons refused entry to a country and placed in such zones are not "deprived of their liberty". These claims were refuted by the CPT and vindicated by the judgement of the European Court of Human Rights in the case of AMUUR against France (25 June 1996). In a third round visits to psychiatric hospitals and institutions for juveniles were also included. In the future the situation of elderly or handicapped people and children in so-called *homes*, where they are placed involuntarily and which in fact they cannot leave, may be an area of concern. Inspecting such places will raise questions as regards the CPT's mandate as was the case with airport detention facilities.

Since 1990, the CPT has developed its own "measuring rods", in the light of the experience of its members and also through a careful and well-balanced comparison of various systems of detention. Those standards were made public in some of the CPT's annual, so-called General Reports and summarised in a uniform document on "Substantive" sections of the CPT's General Reports.

This year, on 1 March, Protocol No. 1 to the European Convention on the Prevention of Torture enters into force and empowers the Committee of Ministers of the Council of Europe to invite any non-member State to accede to the Convention; no geographical limits to this power of invitation are foreseen in the Protocol. Hypothetically, African States may be invited to accede to the European Convention

on the Prevention of Torture. The CPT could also serve as a model for establishing a regional system for the prevention of torture in Africa. A regional mechanism will always have an important role to play regardless of whether a universal system emerges eventually at the global level.

I suggest that the potential for the CPT model to inform future developments such as an African system for the prevention of torture or even the possibility that African States may be invited by the Committee of Ministers of the Council of Europe to accede to the European Convention on the Prevention of Torture be considered and included into the plan of action for the prevention of torture and ill-treatment in Africa.

3. Exemplary practices: the Austrian regional commissions to supervise the executive forces

In July 1999 the Austrian Minister of the Interior created an Advisory Council to deal with questions relating to the protection of human rights (Human Rights Advisory Council). This initiative fulfilled a recommendation of the European Committee on the Prevention of Torture (CPT) in its 1994 report to Austria after the second periodic visit. The CPT recommended that the Austrian authorities create without delay a body of independent persons entrusted with conducting an investigation into methods used by officers of the Security Bureau in Vienna during the detention and interrogation of suspects. Following the allegations heard and the evidence gathered the CPT had stated that there is a high risk of being ill-treated in police custody in Austria in this specific place.

The Advisory Council, composed of representatives of certain ministries as well as NGOs and other independent experts, has inter alia the mandate to monitor and evaluate the activities of law enforcement agencies, and to advise the Federal Ministry of the Interior on

human rights issues. The Advisory Council is empowered "to visit each place in which power of command and coercive powers are exercised by the law enforcement agents", to have access to any information required, including the right to interview detained persons in private. In order to fulfil these duties six regional commissioners were set up and became operational in July 2000. These commissions are composed of independent experts from different professional backgrounds relevant for their work (lawyers, doctors, social workers), and have a similar mandate to that of the CPT. They carry out visits to police establishments, interview detainees in private and make recommendations. The "mini-CPT's" in Austria follow the standards set by the CPT, but to raise the level of human rights protection of persons in police custody in Austria their goal is also to develop clear and uniform guidelines for and together with the executive agents. The CPT delegation, during its third periodic visit to Austria in autumn 1999, welcomed the creation of these inspecting bodies and expressed the opinion that if these commissions operate effectively, the whole system will constitute a significant safeguard against ill-treatment by the executive forces in Austria. For the future an exchange of information and close co-operation between the national "inspectors" on the one hand and the international "inspectors" on the other hand is foreseen.

This example clearly shows the potential of national mechanisms for the prevention of torture and ill-treatment of detained persons. The relationship between existing or emerging regional mechanisms and existing or emerging national mechanisms needs to be approached imaginatively.

I suggest that the establishment of such national independent inspection bodies for different types of detention situations (police, prisons, psychiatric establishments, centres for aliens) be considered and included in the plan of action for the prevention of torture and ill-treatment in Africa.

Control mechanisms to prevent torture and ill-treatment

by ADVOCATE KAREN McKENZIE,
Executive Director of the Independent Complaints Directorate (ICD), South Africa

Introduction

Methods used to deal with complaints against police, including torture and other forms of ill-treatment, theoretically range from an exclusive police-controlled model, still used in the overwhelming majority of United States police jurisdictions (Walker and Wright 1995,1), to a system in which the receipt, investigation, determination and discipline of police is the exclusive responsibility of an external independent, civilian agency. Between these two extremes is a plethora of models, which to varying degrees use civilians to monitor, supervise, review and/or investigate complaints and, in some instances, to recommend disciplinary action and impose sanctions.

"Typical" civilian oversight bodies all over the world vary in terms of size, role, functions, power, status and jurisdictions. However, it is still possible to group models according to certain criteria. I am in favour of Kerstetter's classification, which identifies three principal models, namely: Civilian Review, Civilian Input and Civilian Monitor. They are briefly discussed below as follows:

1. Civilian review

This is the most powerful form of civilian oversight. The external oversight agency has the authority to investigate, determine and recommend punishment. The recommendations are forwarded to Police Management or the Prosecutorial Authority. The Independent Complaints Directorate has powers to investigate, using its full time investigators and thereafter recommend disciplinary or prosecutorial steps. It therefore falls more or less within this category except, of

course, for the fact that it does not determine or recommend punishment. That area, in our legal system, is the prerogative of the presiding officer, either in criminal or internal proceedings. In some jurisdictions, the oversight body can monitor the policies, practices, trends and procedures of the police department. This is done through research conducted by way of visitation of police stations, collection of statistical information, interviews, observation, etc. The ICD has a research and development programme that is tasked to undertake research projects. There is no specific clause in the enabling statute empowering ICD to embark on research. However, the statute does make mention of the fact that ICD needs to operate efficiently and effectively, in certain instances, to undertake investigations on its own initiative. The ICD therefore submits that it ought to act proactively in order to comply with the intention of the legislature, namely, efficient and effective discharge of its mandate. Besides, torture and other forms of ill-treatment can be prevented if the established oversight body focuses on causes of such incidents as opposed to merely reacting to such incidents. Therefore, an oversight body, which has powers to investigate torture on its own as well as investigate causes, is likely to make an impact on the prevention of such ills. The Canadian models, namely RCMP Public Complaints Commission, the Ontario Police Complaints Commissioner and the Special Investigations Unit also fall in this category in certain instances. While they do not largely investigate, they have however special roles or jurisdictions such as the holding of public hearings.

2. Civilian input

This model confines the civilian involvement to the receipt and investigative stage of the complaints process. There are however several variations to this model. In some instances, the civilian who investigates is in fact employed by the police themselves. This model also overlaps with the ICD's jurisdiction in certain respects. The overlapping feature is that this body may investigate, and thereafter forward a

report recommending disciplinary action to the police. The adjudication of complaints and the disciplinary process remains under the control of the police.

3. Civilian monitor

Here, the role of the external oversight body is to examine whether the police investigation process was thorough and whether the discipline imposed was fair and just. The Police Complaints Authority, an oversight body in the United Kingdom, falls in this category. It only monitors or supervises certain police investigations. It has no jurisdiction on policy or operational decisions. Interestingly, this agency is currently undergoing a process of reviewing whether it should remain merely a monitoring body.

The ICD's power to itself investigate any misconduct "on its own motion" makes it one of the more powerful models internationally. However, the police are only obliged to report deaths in police custody or as a result of police action to ourselves. It is correctly argued in certain quarters that the statute should include an obligation on the part of police to report all criminal offences, including torture, to the ICD. However, the ICD will still reserve its discretion whether to investigate the reported case or not. In the absence of this clause, the majority of complaints, including torture, will continue to be investigated by police themselves, without any civilian oversight. The reporting of these cases would also assist ICD to keep proper statistics and easily analyse trends and practices.

Torture cases require immediate intervention if a proper and effective investigation is to be done. The law, therefore, should not only oblige police to report torture but should oblige them to report "immediately". Therefore, in the absence of such a clause, police would correctly argue, to the disadvantage of effective investigation, that they would have complied with the law if such cases were reported two or three

days later. However, this shortcoming in respect of deaths in police custody and as a result of police action cases has been remedied by administrative arrangements.

The ICD has investigated several torture cases since its inception. The common form of torture in the majority of torture cases handled by ICD relate to:

- Assault;
- Suffocation of victims;
- Application of electric shocks to body parts of victims.

Another worse form of torture cases handled by ICD includes the "helicopter method" in which the victim is suspended and left hanging from the helicopter while in flight, for a considerable period of time.

In the ICD's experience, in torture cases that were brought to its attention immediately after the occurrence of the alleged incident, the ICD has been able to secure independent medical examinations and has also been successful in tracking down witnesses. Independent medical examinations have proved to be more effective than medical examinations by State agencies. Medical forensic experts have been able to draw blood to examine electric deposits where electric shocks have allegedly been applied to victims. Independent medical experts, by virtue of their non-attachment to State structures, have been courageous in making proper and truthful findings without fear or favour.

In our law, torture is not a specific crime. It is covered by crimes of common assault and assault with intent to cause grievous bodily harm, and perhaps to a lesser extent by the crime of intimidation. There is a need for institutions such as the ICD to have a proper defini-

tion of torture so as to enable its statisticians or data processors to properly record and register this form of abuse. It is therefore difficult to investigate or charge perpetrators on other forms of torture other than the one involving physical abuse. The policy of the SAPS (South African Police Service) on torture and other treatment of persons in custody correctly encompasses other forms of torture and the enlargement of this scope will enable ICD to deal with such forms of torture by way of internal disciplinary measures. ICD's definition of torture is similar to the SAPS's which is: "any act by which severe pain, suffering or humiliation, whether physical or mental, is intentionally inflicted on a person for the purpose of obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating him or her or a third person, when such pain, suffering or humiliation is inflicted by or at the instigation of or with the consent or acquiescence of a member or any other person acting under authority or protection of the service".

In order to enable civilian oversight bodies to effectively fight torture, the following powers are required:

- Power to enter and search police premises and seize articles;
- Power to subpoena witnesses to provide information;
- Power to subpoena documentation in the possession of the police, army, etc;
- Power to conduct inquiries that lead to the making of findings;
- Power to order departmental prosecutions;
- Power to visit police stations and inspect cell conditions, interview inmates, inspect registers, etc.

At present the ICD can only exercise important powers such as search and seizure through an application to a Magistrate. On the contrary, bodies such as the Secretariat for Safety and Security, Human Rights Commission, etc., have powers to enter and search premises. In fact these bodies can even seize articles. Oversight bodies such as the ICD need these powers to search for torture instruments and seize them once found.

The investigation of torture cases alone is not a complete solution. A culture of good ethical conduct needs to be inculcated in police members. The ICD, in its experience, shares in the belief that the following ethics are important for police members:

- Absolute respect for the dignity of the person;
- Integrity;
- Impartiality;

In conclusion, the ICD submits that the essential characteristics of a complaints mechanism should be:

- Independence;
- Credibility;
- Effectiveness.

Possible control measures for police and prison services to prevent torture and ill-treatment of detained persons

by HONORÉ TOUGOURI,
President of the African Penal Association (APA)

Before taking up the measures that might be envisaged to prevent acts of ill-treatment and torture of persons in the hands of justice, it seems to me that the basic first step would be to give a certain clarity and applicability to the pertinent norms –both international and national– in this field. I know that the first speakers will not fail to bring up this set of problems when they talk about the normative framework which is one of the main themes of this workshop.

For my part, I'd just like to point out two aspects which seem important to me in that they would facilitate the control measures to be suggested for both the police and the prison services.

What is needed is to create a solid legal basis for the struggle against torture and ill-treatment of detained persons by:

a) Declaring "torture" to be a specific crime (a task for the legislator) in the various penal codes of the African countries

Article 4 of the Convention against Torture enjoins the States Parties to make sure that all acts of torture, as well as the attempt to practise torture, constitute infractions in the context of their penal law (para. 1) and to make these infractions subject to appropriate punishments which take their seriousness into account (para. 2).

Certain national bodies of legislation consider torture either as an aggravating circumstance related to another infraction[14] or as a consti-

14 Article 67 of the penal code of Zaire, para. 2: "When the person kidnapped, arrested, or detained has been submitted to bodily torture…. "

tutive element of a crime against humanity.[15] In any event, certain countries have declared torture to be a criminal act in a specific manner in their legislation.[16]

Declaring torture to be a crime, as prescribed by the Convention, would be the legal basis of all judicial action. In general, judges are not very inclined to search out and utilise the provisions of international conventions in their procedures. The recent examples in which such provisions have been invoked are for the account of organisations of civil society (Senegal: Hissen Habré case).

The outcome of this workshop must thus focus on the application by the States Parties of Article 4 of the Convention so as to facilitate the prosecution of crimes of torture and ill-treatment at the local level by national jurisdictions. The workshop should recommend the adoption of the definition of torture, as it is in the UN Convention itself, by the different States.

b) Making the "allegation of torture with malicious intent" a specific crime in the various penal codes of the African countries (a task for the legislator)

The will to crack down on perpetrators of torture and ill-treatment must go hand in hand with that to act against persons who attempt to accuse public authorities wrongly and with malicious intent.

Making this latter a crime should re-establish a certain balance between the interests and rights of suspected persons and the interest of the community in seeking out and punishing the originators of

15 Article 314 of the penal code of Burkina Faso: "The death penalty shall apply to those who deport, reduce to slavery, or practise massive and systematic summary executions, abductions of persons, followed by their disappearance, or torture or inhuman acts, for political, philosophical, racial, religious or other motives in carrying out a concrete plan directed toward a group of the civil population or combatants of an ideological system in the name of which the said crimes are committed."

16 Article 19 of the Constitution of Benin.

disturbances of the public order falling in the domain of the criminal investigation department.

These two "preliminaries" having been raised, let us now consider the following proposals concerning the police forces (1) and the prison services (2).

1. Possible control measures for police services

1.1 The external control during the preliminary investigation (by judicial authorities)

A better control by the public prosecutor's department on the investigative procedures of the criminal investigation department and a real and unannounced control of police custody sites and those responsible for them by judges from the public prosecutor's department

Codes of penal procedure or other texts (such as the constitution) generally provide for control mechanisms in respect of the activity of criminal investigation department (CID) officers on several levels:[17]

- management by the public prosecutor;
- supervision by the attorney general;
- control by the court of criminal appeal;
- penalties imposed by higher jurisdictions, especially constitutional ones.

17 Article 12 seq. of the criminal procedure code (ordonnance 68-7 of 21 February 1968 referring to the criminal procedure code (J.O.RHV of 13 May 1968, p. 229).

Sometimes for objective reasons (importance of the local procedures, insufficient personnel, importance of those locally responsible, lack of logistic resources, excessive work load...) and often less objective ones (professional laxness, fear of affecting working relations with direct associates adversely, sparing other people's susceptibilities, excessive confidence in or complicity with associates...), the judicial authorities in charge of directing the action of criminal investigation department officers only show an interest at the stage of the investigation if a sensitive case is involved or at the moment of handing over the persons concerned in a criminal action to the courts.

Very rarely does one see judges from the public prosecutor's department visiting sites of police custody (police stations, gendarmerie squads), controlling registers, asking questions about cases in progress...

Now it is precisely during these periods, when the criminal investigation department officer is searching out the elements to build up his/her case that he/she may be tempted to apply violence to the suspect to "get on faster", i.e. to obtain a confession. It is therefore necessary for the public prosecutor to keep a close watch on the action of the CID officers and for the attorney general to supervise closely the surveillance exercised by the criminal investigation department. The control carried out by the court of criminal appeal and, beyond that, the sanction of the higher jurisdictions (supreme court, constitutional court...) must be made truly effective.

By way of illustration: between October 1993 and March 1999, the Constitutional Court of Benin handed down 128 decisions related to the issue of human rights and public freedoms. No less than 72 violations were pronounced, of which 44 involved police detention, arbitrary detention, cruelty, degrading and inhuman treatment.[18] Even if

18 "La protection des droits fondamentaux et libertés publiques par la Cour constitutionnelle" {The protection of fundamental rights and public freedoms by the Constitutional Court}, Emilien d'ALMEIDA, Scientific Secretary, UNESCO Chair of the Rights of the Human Person, University of Benin.

these sanctions were unfortunately never put into effect, the very fact that a court decision was able to stigmatise such behaviour is a success in the current framework of the majority of countries in Africa.

Institution of a (new) substantial formality in the course of the interrogation of persons handed over to the public prosecutor's department by the CID

At the first contact with the person handed over to the judicial authorities, it can be stipulated in the legal provisions (in the code of criminal procedure) that the judge has an obligation to ask the person expressly whether he/she has been subjected to ill-treatment or torture. This formality must be carried out by the interrogating judge on nullifying the procedure in progress.

Such a legal prescription should put the judge "more at ease" vis-à-vis his/her direct associates who are CID officers and has the merit of revealing immediately any occurrences of torture or ill-treatment. It should also have a dissuasive or preventive effect on CID officers in their daily practice.

Immediate and mandatory initiation of an investigation of "X" for acts of torture by a judge of the public prosecutor's department if the person in custody makes allegations of torture

The investigation will be opened in respect of an individual "X" (as a precautionary measure) so as to avoid negative administrative and disciplinary consequences for the individual named in the allegations, since the investigation is only beginning and the veracity of the facts has not yet been established. There will always be enough time to apply sanctions if the facts are confirmed! The other side of the coin is that this might entail a certain paralysis on the part of the CID in future.

Introduction of the possibility of having legal representation as from the beginning of the legal period of police custody

By its very nature, the presence of a lawyer on the premises of the CID will reduce to a certain extent the practice of violence toward detained persons.

The obligation to present the person charged before a judge at the beginning of the legal period of police custody prior to any prolongation

This provision exists in the Benin legislation (Constitution of Benin, Article 18, para. 4), which fixes the limit of police custody at 48 hours. The Constitutional Court of this country has on several occasions sanctioned failure to respect the time limit of police custody, pointing out that "even in cases of State security, the rules prescribed by the Constitution and relative to police custody are binding on all parties ... whatever may be the conditions of work and the difficulties encountered…".[19]

Providing legal counsel for a plaintiff in the case of an accusation of torture by a person detained by the public authorities

Just as the presence of a lawyer is often prescribed by law in the case of criminal procedures, a similar provision can be envisaged in the case of an accusation of torture. The bar associations can make an appreciable contribution to the process leading to the adoption of a procedure of this kind. But a complaint of torture against a public agent made with malicious intent must be subject to severe sanctions, as suggested above.

19 Decision no. DCC 97-012 of 26 March 1997 of the Constitutional Court of Benin.

1.2 The internal control of the police authorities over the practices of their personnel

The training and professionalism of CID personnel (techniques of investigation…)

Today, the development of science and technology has made it possible to "revolutionise" police investigations, but, unfortunately, the majority of police units are not trained or equipped to implement these possibilities. Even in the countries where appropriately trained and equipped units exist, their number is minimal and their action limited.

Training a larger number of CID officers and equipping investigative units of the CID in the countries can also contribute to the use of the new techniques to foil lawbreakers. A confession can no longer be considered (by CID officers and even by judges) as the ultimate proof in criminal cases...

In my view, this is the most important measure to be introduced, since it makes the system evolve from within, by the very persons who are concerned in the first instance.

A better follow-up and control from the top down by the police authorities over the practices of the police and the application of appropriate disciplinary sanctions in case of breaches

The organisation of the police services must permit an effective control of their personnel from the top down on all levels. A false group loyalty leading to cover-ups of serious infringements of the code of professional ethics, especially in cases of ill-treatment or torture of suspected persons in the custody of the CID, must be excluded.

The police inspection services will likewise be able to play a significant role in the prevention of torture and ill-treatment if torture is one of the express headings in the official form used to analyse inspections.

Informing and sensitising public opinion about the illegality of using torture and ill-treatment in the course of CID investigations

It is common to hear citizens demand that the police authorities charged with investigations "put the heat on" the suspect or "work him/her over", i.e. to brutalise him/her so as to obtain a confession. The authority that balks at these practices is sometimes even suspected of collusion with the presumed criminal.

The suspect must be made aware of the illegal character of such practices and encouraged not to go along with them.

2. Possible control measures for prison services

2.1 The external control by the judicial authorities and civil society over prison services and practices

The effectiveness of the legal visits by the judicial authorities in prisons (judges, prosecutors, appeal court prosecutors, the president of the court of criminal appeal, the president of the appellate court, the judge responsible for sentences)

In virtually all African countries, at least in those of Latin tradition, periodic visits by the judicial authorities to detainees in prisons under their responsibility are provided for in the codes of penal procedure. In the majority of cases, these visits are not effective, for reasons as much subjective as objective. Providing information about and supporting the application of these provisions, by sanctions both administrative (warning, call to order, …) and penal (fine), can give the judicial authorities additional motivation to carry out their tasks properly.

The institution of a judge responsible for sentences in all prisons and the practicality of commissions on sentences[20]

The constant presence of a judge and of a commission comprising members external to the prison and to the penal administration (religious figures, leaders of organisations in civil society, doctors, social workers, ...) charged with dealing with all problems linked to the carrying out of prison sentences can also constitute a supplementary guarantee of respect for detainees' rights as well as their physical and moral integrity.

The effectiveness of inspections of prison services by the competent authorities

Following the example of judicial authorities reluctant to carry out the visits to detainees prescribed by the pertinent legal dispositions, the inspection services of the ministerial departments of justice generally have the title of the control of conditions of detention in their job descriptions, but in reality this control is rather theoretical, if not indeed summary or non-existent.

Encouragement and promotion of the action of prison visitors and organisations of civil society in prisons

The latest political developments in Africa, in particular in the domain of democracy, have made it possible for civil society to go into the prisons; this is without a doubt a big step forward in the respect for human rights in these institutions. Even if visitors are unable to ensure a constant presence in the prison, their temporary presence suffices to reduce to a certain extent the risk of ill-treatment to the detriment of detained persons.

20 Article 25, decree (Kiti) no. An VI-103/FP/MIJ of 1 December 1988 referring to prison regulations.

Nonetheless, prudence in the form of intervention is recommended, so as not to expose detained persons making complaints to possible reprisals.

2.2 Internal control in prison services

Instituting an obligation for prison personnel to note and denounce suspicious facts that might be indications of ill-treatment or torture of persons deprived of their liberty

Prison regulations generally provide that an arriving inmate be interrogated by the establishment's administrative services. Certain regulations even require a medical examination of the person prior to his/her incarceration.

The above proposal goes beyond this legal prescription by creating an obligation to denounce in the job description of the health official or any other agent in the prison service.

For this to have a legal basis, the obligation must be introduced into the prison regulations. Its non-application by the health or other official will then be considered as a failure to assist a person in danger.

This obligation to denounce, incumbent on all prison personnel and beginning with the official directly responsible, obliges everyone, on his/her level, to denounce any allegation by the incarcerated person of acts of torture as well as all suspicious observations suggesting torture or ill-treatment.

In the former Zaire special criminal law there was an infraction called "failing to give testimony in favour of an innocent person".[21] This

21 Zaire special criminal law, vol. 1, 2nd edition, General Likulia BOLONGO, LGDJ 1985, page 192 seq.

infraction, an exception to the fundamental rule that no one is obliged to give testimony in justice unless required to do so by being subpoenaed, makes it possible to safeguard the liberty of innocent persons, for it aims at suppressing failure to furnish the judicial authorities with the proof of such persons' innocence when they are incarcerated temporarily, or detained for preventive reasons.

The obligation to denounce occurrences of torture can take the form of an infraction similar to the one in the Zaire special law under a title like "failure to denounce occurrences of torture". In this case the law would crack down on the passive attitude of prison (or other) personnel in the face of occurrences of torture.

Intensifying and professionalising the training of prison personnel

In line with the suggestion made for CID officers, it is essential that prison personnel be informed about and trained in the field of human rights. The training programmes at the centres for training prison personnel (when these exist) do not take sufficient account of the provisions of international agreements. It is also necessary to create particular corps of prison agents having the benefit of a basic and continuing education in this regard.

Setting up a functioning disciplinary system applicable to detained persons (texts, scope of sanctions, procedure to be observed, competent authority…)

The system of disciplinary sanctions in prison is often not formalised, so that a broad latitude is left to the prison personnel in this field. The disciplinary regime must provide for a simple procedure that permits the detainee to present his/her defence before an impartial authority which evaluates, and if necessary sanctions, on the basis of the existing disciplinary punishments in the prison regulations. This procedure must be explained to each incarcerated person.

Implementing a system of information for detainees on their rights and of legal continuity in prisons

It is impossible to defend a right of which one has no knowledge. The majority of persons detained in the African countries have the disadvantage of belonging to the most underprivileged classes and of knowing neither their rights nor the mechanisms and procedures for asserting them. This leads prison personnel with bad intentions to take advantage of the situation and commit abuses. The actions recommended here may be undertaken by the prison services or also by organisations of civil society.

The effectiveness of control from the top down and of internal inspections in penal establishments

To protect the detainee who makes a complaint from subsequent reprisals, the prison services organisation must allow for an effective control from the top down on all levels of the chain of command of prison personnel. A false group loyalty leading to cover-ups of serious breaches of professional ethics, especially in the case of ill-treatment or torture of persons in the hands of the penal system, must be excluded.

The inspection services can also play a significant role in preventing torture and ill-treatment if an express heading on torture is provided in the form used for analysing inspections.

Conclusion:

The measures of control and prevention of torture and ill-treatment must serve to intensify the struggle conducted by society as a whole against impunity. The institution of the judiciary must be a reliable partner in this struggle: If it is not, the door will be open to every kind of abuse.

Criminal justice in the African countries would also gain by exploiting other avenues than the repressive ones to which it has primary recourse at the present time. Adopting such a viewpoint could flatten the curve of violent actions committed by the public authorities responsible for application of the law, because the objectives aimed at by this criminal justice (at least as regards minor infractions and offenders) will be reparation, compensation, dialogue, community service work…

3. Rehabilitation and reparation measures to prevent torture and ill-treatment

Measures required on rehabilitation and reparation, the case of South Africa

by FATHER MICHAEL LAPSLEY,
Institute for Healing of Memories

I've been asked to speak on the presentation, rehabilitation, and reparation measures required to prevent torture and ill-treatment, and in some ways there's a problem with that particular formulation in that primarily reparations and rehabilitation are what we're engaging when in fact torture has happened, but that's not to say that they don't have a place in helping to prevent torture. I would want to say, just to make the observation, that any event that concerns torture has a particular significance for me as a Christian, as a priest, because the one I seek to follow died as a result of torture. So, torture is not something about which anyone who's a Christian can be in any sense ambivalent.

Perhaps I should give you a little bit of my own background. I speak to you as a survivor of State-terrorism and specifically the terrorism of the Apartheid State. I was the recipient of a letter bomb in April of 1990. The date is quite significant for us as South Africans in that it was three months after the release of Nelson Mandela; it was on the very eve of the first talks between the ANC and the national party government. I suppose, in a sense it was the ultimate act of cynicism of De Klerk government that they chose two religious magazines as the ingredients to kill a priest. Now, I suppose my own journey in many ways was the journey from being a freedom fighter to being a healer. I was a chaplain member of the African National Congress of South Africa, living for many years outside South Africa, first as a guest of the Basutu Nation, later as a guest of the Zimbabwe Nation. I want to say that with the Zimbabwean sharing the Chair there that in many ways I felt embraced by a nation of the Zimbabwean people, at the time that I received that letter bomb in April of 1990. Then, I came back to South Africa in 1991, to visit, in 1992 to live; in 1993 I became one of first two employees of a Trauma Centre for - as it was then

called – victims of violence and torture. I spent five years as chaplain to that Trauma Centre and I developed a program called "the healing of memories", seeking to deal with the psychological, emotional and spiritual effects on the individual of the past of our country. Then in '98 we formed an institute for "the healing of memories".

But I want to go back a step, because I want to put what I say about reparation and rehabilitation in the context of the South African Commission for Truth and Reconciliation, which was this principal vehicle that we used as a Nation to seek to deal with our past, and it is important to recall how that Commission was structured, because it is also illustrative. There were three Committees of that Commission, the Human Rights Violation Committee, in which people who had been tortured, who had survived attempted murder, relatives of those who had been murdered, those who had been abducted, those who had received an ill-treatment, were given a platform, and something like 23,000 South Africans came forward to tell their story.

I want just to refer briefly to a book "A Country unmasked inside the South Africans' Truth and Reconciliation Commission" by Alex Barein, who was the deputy chair of the Commission. He writes that from June to August 1997 the Truth Commission analysed a large amount of evidence presented to it concerning allegations of torture committed by the security forces. Our information indicated that the rate of torture increased more than ten fold after the declaration of the state of emergency in 1986. Furthermore, the Truth Commission had received statements alleging that the security forces had been involved in almost 2,000 acts of torture in more than 200 different venues around that time. It goes on: "Torture was not something that took place in a handful of prisons performed by perverted warders, torture was endemic. There was no place we visited, no hearing we conducted which did not contain stories of torture. Thousands were killed, not merely at roadblocks and ambushes but by abductions and design. Those who were seen as a threat to the Apartheid regime were in many instances summarily executed".

So, in a way, we could not be meeting a more appropriate country to talk about the removal of torture, as I have to say, than this land of South Africa. Now, as I've said, those torture stories were brought to the Human Rights Violation Committee. There was another Committee, the Amnesty Committee. Reference has been made to the role of amnesty by earlier speakers; as you all know, that if people told the truth, proved that what they have done was political, proved that it was a proportional act, fulfilled this legal conditions they got amnesty. I think more than 7,000 applied for amnesty of whom around 10% actually gained amnesty. But very significantly, those who gained amnesty could not be civilly or criminally prosecuted, so the recourse to all forms of retributive justice was removed from the victims, the relatives of victims and the survivors. Some very famous families in this country took the issue to the constitutional court, for example the family of Steve Biko, saying, our rights to justice are being removed. A constitutional court wrote in favour of the legality of amnesty but said very clearly that the quid pro quo of amnesty would be reparations.

This brings us to the third Committee of the Truth Commission, which was the Committee for Reparation and Rehabilitation. The job of this Committee, unlike the other two Committees, was simply to make recommendations. The first two Committees finished their job when the Truth Commission ended and the job of the Reparation and Rehabilitation Committee was to say to the State: this is what we recommend for those who have been declared to be victims in terms of the legislation. Now approximately 18,800 people fulfilled the legal requirements to be called victims. The Truth Commission set out basically five components to its reparation policy. The first of them was called "urgent interim reparations". When they were first outlined, what they had in mind was, that these were people who could not wait until the end of the Commission, their situation was so desperate. Unfortunately our bureaucracy like others doesn't move like a racing car and so the first urgent interim reparations came towards the end of the life of the Commission and basically something like 2,500

Rand were paid out. So, that was the first element of the reparation policy, and that part alone has been fulfilled by the State in relation to those 18,800 people.

However there were four other aspects of the reparation policy. Individual reparation grants were recommended by the Commission, figures between 17 – 23,000 a year for a period of six years.

The third one concerned symbolic reparations and administrative measures.

People came to the Commission and said things like: "We need a headstone for our loved one." There was also suggestion of a national day of remembrance and memorial for those who had suffered, proposals about community rehabilitation programs aimed at healing, not just individuals, but communities. Also sets of institutions or legal administrative institutional measures to provide and to guarantee the prevention are in some ways signs and some of that has begun to be carried out.

So, those were the basic proposals that were made when the final report of the Truth Commission came out at the end of October 1998…. The problem was that, when the final report came out, the amnesty hearings were continuing for about two more years, which enabled the State to say: "We are waiting for the very final report which hasn't yet come". So although those who were declared victims know what the Truth Commission recommended in October '98, they still wait to know what the State is going to do. This has meant that whilst in many countries around the world our Truth Commission has been hailed as the best thing since sliced bread, inside South Africa the community of relatives of victims and survivors are more frustrated, angry, bitter, sad, disappointed by the day.

This also means that, so far, the Truth Commission, which set out to be a "victim-friendly exercise" has delivered a thousand times more to

the perpetrators than it has to the victims. So, what we see unfolding before us is a national moral tragedy, which however could still be rescued. It is still within the gift of the State to say: "We will implement fully reparations as proposed by the Truth Commission, the cost would be about three billion Rand over six years."

What I am trying to say is that it is not a question of money, it is a question of choice, and it is a question of whether the community of relatives of victims and survivors are able to win their case. What I am suggesting is that the jury is still out on the Truth Commission. I should also say that one of the organisations I am spokesperson for is a NGO Working Group on Reparations. For me, what has not happened is particularly painful as I am one of those who believed in the Truth Commission. I gave evidence to the Commission myself, I worked alongside the Commission, I believe that when you have amnesty, inevitably you cause further pain to the relative of the victim and the survivor, but I also believed that the alternative we had as a country was escalating civil war and we would not be sitting here now, so it was not some kind of detached theoretical choice. That made me believe in the correctness of it, I also think that we should have had, which we didn't, some form of lustration. People whose profession was torturers should not have necessarily gone to prison, I don't object to the fact that they got amnesty but they should not have been allowed to continue within the police force, which in fact they have been. That is also profoundly problematic.

But on the other side, one of the things the Truth Commission did for relatives of victims and survivors was to break the silence. One of the characteristics of our Truth Commission, different from any other Truth Commission in the world hither to, is that it happened in the public eye, it was centre stage in the life of our country for several years. It is common particularly for many of us who have pink skins to say: we did not know. But it is no longer possible for any South African to say this, because we all know now, we've all been told. Working at the Trauma Centre for those years I came to see that for

many torture victims they would say that their torturers would say to them: "Scream for all you like, because there's nobody listening. Don't worry, we won't leave marks, so no one will believe you", and then, of incredible importance, was that a Commission set up by our State listened and believed. But also for the establishment of the moral order it was very important in our Truth Commission that it didn't matter who tortured you, torture was torture. So, whether as in the majority of cases it was the State or whether in the minority of cases it was the liberation movement, the same moral weight was given that torture was totally unacceptable.

That was an achievement that we put our past on the table in our own generation, and we are the first nation to ever put the past on the table, to the degree which we have in the same generation that it happened. That correctly has captured the imagination of people around the world. But we need to say here very clearly, what has not yet happened in the case of reparations.

When this happened to me, it was headlined around the world, so I was, if I may say so, a "popular" victim, I was a freedom fighter at a time when the entire human family had come to the conclusion that apartheid was a crime against humanity. So the world was united, and so my story was acknowledged, reverenced and recognised around the world, which was very important for my journey of healing.

I made a presentation to Amnesty International in New Zealand about a year ago about torture. Reading the literature I began to reflect on the pattern of torture around the world. Many of the people who are tortured today are "unpopular" victims, and that makes all the difference in the world. Who are they? – Asylum seekers, the least protected, and this is important for the reason why we need both NGOs and governments, because governments are not fundamentally committed to the interests of asylum seekers but to the interests of their citizens. So, this is a group of people in many countries in the world

who are subjected to torture and so they need special protection. Also in South Africa today, if you listen quite carefully, people who have been tortured are asylum seekers and criminals, again "unpopular" victims. Who is going to speak for them? I was a little bit disappointed by my fellow South Africans when they talked about sanctions against those who have tortured, but they never talked about any kind of vision of humanity that you shouldn't torture people because they're all human beings.

Another area of torture in Africa that I want to raise, which is very sensitive, is gay and lesbian people. Again you see "unpopular" victims, minorities. In Zimbabwe, Namibia and in Uganda, the Presidents of those three countries made such pejorative comments about that minority, that they effectively have given licence to enforcement agencies to act as if these community of people are less than people and therefore, if they act against them, torture them, well, what do you expect. We have seen this equally in Egypt, where recently the police were acting against gay and lesbian people. The same case for women, who are the majority in our society everywhere in the world, but often because of patriarchy are a more vulnerable group, and equally children.

With this point too, as it is with any kind of policy, and I welcome all the legal instruments that we have spoken about, but we have to go beyond those legal instruments and together with a program against torture has got to come public education, because it is only where you're able to say that human beings have rights, human beings may not be tortured, that we can get rid of torture. As soon as you make any exception, any category of human being, then you allow the possibility for it to grow. So whether it is tribalism, racism, sexism, homophobia, xenophobia, all of these categories that classes the "other" as less than human, is what actually creates the climate for torture. So, we need to talk about the role that political leaders have; as soon as they, for political reasons, denigrate or demonise a sector of the population, they open up the door for the possibility of torture. The media

as well can play an incredibly important role. I hope that a seminar like this would have a strategy for its publicity.

The faith communities, all of them, African traditional religious practitioners, Hindus, Buddhists, Muslims, Christians, have an important role in helping elevate the sanctity of the human person, that people have dignity because they're people, and they need to be mobilised. The most organised social grouping in this country is the religious community; it is the only group you find in every village and town throughout this country. Now, if you want to get rid of torture, then we would have to work with that community. My same point about the racism, sexism, homophobia, xenophobia is illustrated by the US government talking about "unlawful combatants". There again saying "they are not quite people", therefore something can be done against them. Thus a grouping like this must be able to say human beings have certain rights because they are people.

Lastly, on the international torture day last year, in this city of Cape Town, there was a public march from here at the Waterfront, because of its particular connection to Robben Island, a place that was there to destroy the human spirit. In the end the human spirit survived and we walked to the Trauma Centre, which is a very well known place to any one who suffered in this country. The Trauma Centre used to be called Cowley House, where families of prisoners at Robben Island would come and stay to go and visit their relatives on the Island. It was from this place, which was supposed to destroy us, but it didn't, to the place, which sought to be a place of care and compassion.

4. Training and empowerment measures to prevent torture and ill-treatment

Training and empowerment measures to prevent torture

by HANNAH FORSTER,
Executive Director of the African Centre for Democracy and Human Rights Studies (ACDHRS)

Introduction

Although the last few years have seen some positive developments in support of the eradication of torture, it is an increasing cause for concern. Torture continues to be tolerated and widely prevalent in a large number of African countries. In some countries, torture is accepted as part of law enforcement interrogation and punishment procedures.

1. Situation of torture in Africa

It has been stated that torture was carried out in 32 countries in Africa. Police, Security Forces or other State authorities reportedly carried out these acts. Confirmed or suspected extra-judicial executions were carried out in 24 countries while arbitrary arrest and detention was reported in 25 countries.

- In some countries e.g. Liberia, Sudan and Cameroon, criminal suspects were routinely assaulted and subjected to vicious and prolonged periods of torture. The practice is endemic among security forces and has resulted in many deaths in custody.

- Situations of **war and armed conflict** within and between **States** have also given rise to serious and flagrant human rights violations, which in most cases involve torture of victims. Armed and inter-ethnic conflicts in Burundi, Guinea, Liberia, Sierra Leone, Angola and the Democratic Republic of Congo have resulted in large-scale killing of civilians as well as rape, torture, disappear-

ances and massive population displacements. In such situations both government and rebel forces are responsible.

- **Refugees** flee from conflict to end up suffering atrocities such as amputation, abduction and rape.

- **Gender**-specific forms of torture to which women are subjected continue to be the norm. (General Recommendation 19 of CEDAW[22] entitled "Violence against Women" includes the right not to be subjected to torture or ill-treatment among those rights impaired or nullified by gender-based violence under international law and constituting discrimination within the meaning of the Convention.)

- **Mentally ill persons or those with disabilities** may continually experience degrading treatment as a result of their isolation or disability.

- **Human rights defenders** are becoming increasingly victims of torture and ill-treatment to prevent them from undertaking human rights activities. These are mainly threats to their physical integrity, including death threats, and legal restrictions relating to the existence of the organisations to which they belong.

- Conditions of detention continue to be hazardous, particularly of women and children detainees. These conditions include overcrowding, unsanitary environments, inadequate or insufficient food and clothing, insufficient or lack of appropriate attention to their medical, emotional and educational needs.

- Nigeria, with the introduction of Sharia law in some northern countries, has led to the adoption of harsh corporal punishment offences.

22 www. un.org/womenwatch/daw/cedaw

- Whereas in Burkina Faso, Cameroon, Kenya, Liberia, Tanzania, Togo and Zimbabwe, to name a few, politically motivated harassment of opponents remain "public policy".

In sum, gross violations of human rights continue.

- Companies and individuals around the world, particularly in Africa, are involved in providing devices and expertise, which are ostensibly designed for security or crime-control purposes, but which in reality lend themselves to serious abuse.

- Leg irons and shackles are reminiscent of the cruelty and inhumanity of the slave trade. In modern times, electro-shock devices are an increasing part of the torturer's collection, as are "non-lethal" weapons such as tear gas and chemical irritants. However different these devices and weapons are, they have the potential to inflict severe pain and injury and can facilitate torture. Circumstances exist **whereby military and security training and expertise are transferred to train torturers.**

- We also noted, with concern, that in certain circumstances, **health professionals** are actually **involved** in the **execution of** these **malpractices**. In other cases they may still be under **pressure to condone torture** in contravention of their codes of ethics.

- The September 11 events and their implications are still fresh on our minds. As at now, the application or not of the Geneva Convention to the persons captured (treatment of prisoners of war) during the subsequent fighting needs some consideration.

- The recently concluded WCAR Conference has also highlighted the level to which violence, and torture in particular, has degenerated relationships around the world.

2. Why training and empowerment?

The concept of human rights education (HRE) in human rights instruments appears in :

- Universal Declaration on Human Rights (UDHR)[23], Art. 26
- International Covenant on Economic, Social and Cultural Rights (ICESCR)[24], Art. 13
- Convention on the Rights of the Child (CRC)[25], Art. 29
- Vienna Declaration and Plan of Action (Section D, Paragraph 78-82)[26]
- Resolution on Human Rights Education by the African Commission on Human and Peoples' Rights (adopted in 1993)
- UN Decade for Human Rights Education (1995-2004)[27]

Together these instruments provide a clear definition of the concept of Human Rights Education. In addition, the latter stressed the importance of human rights education and appealed to States and organisations to include issues of human rights, humanitarian law, democracy and legitimacy in curricula of all educational institutions and to develop concrete programmes and strategies, which contribute to human rights education.

The 1998 UN world Campaign on informing the public of the human rights educational institutions is regarded in this respect as one of the most important means of forming the culture of human rights.

23 www. un.org/Overview/rights.html
24 www. unhchr.ch/html/menu3/b/a_cescr.htm
25 www.unicef.org/crc/crc.htm
26 www. irct.org/instruments/Untexts/vienna.htm
27 www.unhchr.ch/html/menu6/1/edudec.htm

human rights education can also be defined as training, dissemination, empowerment and information efforts aimed at building a universal culture of human rights through the importing of knowledge and skills and the moulding of attitudes directed towards:

- the strengthening of respect for human rights and fundamental freedom;

- the full development of the human personality and its inherent dignity;

- the promotion of understanding, tolerance, gender equality and friendship among all national, indigenous peoples and racial, national, ethic, religious and linguistic groups;

3. Provisions relative to the prevention of torture

- Convention against Torture (CAT), Art. 2

- Universal Declaration on Human Rights (UDHR)[28], Art. 5

- International Covenant for Civil and Political Rights (ICCPR)[29], Art. 7

- African Charter on Human and Peoples' Rights (ACHPR) Art. 5

4. Provisions relating to human rights education

- International Covenant on Economic, Social and Cultural Rights (ICESCR)[30]

28 www.un.org/Overview/rights.html
29 www.unhchr.ch/html/menu3/b/a_ccpr.htm
30 www.unhchr.ch/html/menu3/b/a_cescr.htm

- International Covenant on Civil and Political Rights (ICCPR)[31]
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)[32]
- Convention against Torture (CAT), Art. 2
- Convention on the Elimination of all forms of Discrimination against Women (CEDAW)[33] , Art. 2
- Convention on the Rights of the Child (CRC)[34], Art. 4,17,19, 29 and 44, Para. 6

5. Training and empowerment measures to prevent torture in Africa

In order to eradicate torture in Africa, the following actions could be considered at local, national and regional levels:

- Training to provide various professionals involved in helping victims of torture i.e. doctors, surgeons, psychiatrists, psychologists, human rights experts, lawyers, police officers, prosecutors, judges, etc. with a precise knowledge on how to analyse allegations and the after-effects of torture and enable them to better determine whether a survivor has been tortured. Forensic medical experts would be able to know whether a dead person was tortured.
- Need to sensitise the political leadership to issues pertaining to torture.

31 www.unhchr.ch/html/menu3/b/a_ccpr.htm
32 www.romanothan.ro/eng/documente/international/icerd_art.htm
33 www.un.org/womenwatch/daw/cedaw/
34 www.unicef.org/crc/crc.htm

- Need to lobby government to encourage revision of national laws to address the prosecution of torturers and reparation to victims.

- In Africa, only 35 countries (as at January 2002) have ratified the Convention against Torture (UN-CAT). Accession to UN-CAT, ICC and other instruments should be encouraged where they have not taken place.

- Training directed at the **public** to encourage them by undertaking efforts which promote a culture of tolerance, non-violence as well as respect for human rights.

- Special consideration of practical ways to protect women and children against torture and particularly in situations of armed conflicts.

- Sensitisation of civil society to encourage greater involvement in the fight against torture, particularly persons in the health, legal and other professions, the media and NGOs.

6. Some recommendations

To the African Commission:

- To endorse the outcome of this workshop as a matter of priority as a first step forward in dealing with the human rights situation in Africa.

- Include torture on the checklist of Commissioners on their in-country promotional visits.

- Incorporate torture on the agenda of the African Commission and to encourage NGOs and national institutions, with observer status, to present reports on the situation of torture in their various countries.

- Involve the Commission in the sensitisation of the Declaration and complement the work of other actors in this area.

- To appoint a Special Rapporteur on Torture in Africa to be the focal point on issues concerning torture at the Commission and to, among other things, solicit, receive and exchange information and communication including complaints and on systematic violations, from all relevant sources, on any form of violence or ill-treatment they may be subjected to, as well as its causes and consequences, to undertake investigations and to take appropriate actions.

- The African Commission should work with the United Nations Committees, particularly the Committee against Torture, and to co-operate with other States to eradicate all forms of violence, especially torture, by providing resources and technical co-operation.

To States:

- To become party to the UN-CAT as a matter of priority

- To conduct research and studies and implement training programmes for all governmental officials in collaboration with civil society groups, including NGOs.

- To take all necessary measures to prevent violence against vulnerable groups through education and training programmes for institutions, media and other civil society groups.

- To promote the eradication of all customary and traditional practices that are harmful to women and children and therefore constitute torture, including female genital mutilation, forced labour and early marriages.

- To promote and support community-based and local mechanisms

for combating torture.

- To empower the population for effective participation in the prevention and protection against torture through the provision of adequate resources at all levels.

- To co-operate with other civil society groups and eradicate all forms of violence, torture, by providing resources and technical co-operation.

- African countries should ensure the effective functioning of the UN mechanism dealing with torture as well as the African human rights system.

- To establish and or enhance effective monitoring bodies for the implementation of domestic legislation.

- To promote justice systems that eliminate violence and meet international standards.

To civil society groups including the APT and other NGOs:

- To organise public campaigns on torture in order to sensitise the population and to familiarise them with issues as well as the instruments and procedures relative to torture.

- To recognise and celebrate in solidarity with the United Nations, June 26, as the International Day for Torture Victims.

- The APT to facilitate the organisation of a seminar, which will bring together all stakeholders to review the situation of torture in Africa - identification of its root causes and consequences. This seminar would be a forum for the exchange and sharing of information, and the publication of such a report highlighting success stories

would indeed be a resource for interested groups.

- The APT to facilitate and co-ordinate research on the situation of torture in Africa.

- To provide counselling services to victims of torture.

- To encourage solidarity groups of victims in order to provide support. These groups can be empowered to prevent recurrence of violations.

- To provide training for various groups in the community, particularly the media, which will empower them to monitor the situation in their own environments.

- Organisation of roundtables and conferences to discuss and disseminate information on the Declaration and how groups can contribute towards the prevention of torture in Africa.

Measures required on "Public Education, Sensibilisation, Awareness" to prevent torture and ill-treatment

by Dr. BARNEY PITYANA,
Commissioner of the African Commission on Human and Peoples' Rights

I'm very grateful to have come after the advocate Karen McKenzie, the executive director of the ICD, because I do believe that the role of independent institutions comes into focus here, and she has presented one. I certainly do intend to present a view from another national institution, the Human Rights Commission, which I think is complementary. All of that is very important. I'm also grateful that Karen has taken time to talk in a very empirical sense about what the ICD are doing in South Africa, which is a very important initiative. But the other side of what I want to say has to do with the actions of non-State law enforcement officials, because torture is actually not the sole preserve of law enforcement officers, also we can focus on what the security officials are doing by way of torture. We need to recognise that there are other ways in which torture actually happens; especially in our country the vigilante groups play a very important part in the way in which torture processes work. It may well be the case, although I don't claim to have any authority for this, that at times policemen may be acting with non-State actors in applying discipline.

So I'd like to deal with both areas because I think they're important. But in order to do that I want to focus on the mandate of the African Commission on Human and Peoples' Rights. It's a mandate that is very clearly and quite fully focused on promotion and protection as Article 30 as well as Article 45 of the African Charter say. In this regard, Article 45 talks a great deal in sub-article one to promote human and peoples' rights and in particular:

a) to collect documents, undertake studies and research on African problems in the field of peoples' and human rights, organise semi-

nars, symposiums and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and, should the case arise, give its views or make recommendations to governments

b) to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African governments may base their legislation

c) to co-operate with other African international institutions concerned with the promotion and protection of human and peoples' rights.

Education and public awareness, as far as the African Commission is concerned, really falls under that mandate of Article 45, sub-article 1.

The important thing is that the African Charter, if it is to become very much a basis of African legal practise and human rights practise, has to be known and understood; the principles of the Charter may well include provisions that are in the international instruments as well, but there are also very important and significant ways in which the African Charter needs to be honoured for what it is. But the true matter for historical and other reasons is that the African Charter has not really been well known and indeed applied in many African jurisdictions, and because it has not been applied in the jurisdictions of the courts in many countries, its jurisprudence is not well developed. But in the last five years or so the African Commission has worked extremely hard and very well to develop considerable jurisdiction on all aspects of the African Charter. But at the same time, you will be surprised, even as great as the constitutional court of South Africa is, how much of the African Charter and its principles are relied upon in the legal system in our country. Also, probably the jurisdiction of Nigeria uses the African Charter a lot more than other States.

From the African Commission's point of view the first thing to be recognised is the extent of ignorance in our continent about the Charter, Africa's own document or code of human rights. Yet, the potential for the Charter is enormous, because all the African States have ratified it. What we have found is that there have been all manner of criticisms of the Charter; sometimes because it is considered to be weak in terms of prevention of violation of human rights. There has also been criticism of us as members of the African Commission that we're not rigorous enough in our application of the Charter, but as far as I can attest, this fact is no longer true.

So the challenge we have in the African Commission is the popularisation of the Charter itself as an African instrument for the promotion and protection of human rights. I want to suggest that the change began with the "Grand Bay Declaration" of the first human rights ministerial conference in Africa. In April 1999 the Grand Bay Mauritius Declaration set out a declaration which was clearly based on the principles that we have founded the African Charter on itself. So, at least, beyond the Charter itself, we've got in fact a very important document in the Grand Bay Mauritius Declaration, that actually presents for the rest of us an interpretation of some of the principles in the Charter.

A second thing that should happen, in my opinion, more, and probably is not happening at all, is that in recent years I know that the Secretariat of the Commission has found resources with the assistance of NGOs, in order to make available some of the work of the African Commission, which is generally not very well known, for example the distribution of the African Charter itself and its translation. I think more can be done, for example the work of the Commission is one that needs a greater publicity. So a publication programme concerning the African instruments is clearly a very important matter.

The Constitutive Act to the African Union, which was inaugurated in July 2002, enshrined some of the key-principles of the African Charter. So, in our view, adherence to the African Union and its

principles requires an understanding of the Charter. This is going to be a new thrust in the awareness raising and popularisation of the African Charter, in a way we never had before. So, if you have an instrument like the Constitutive Act, that makes a reference to the African Charter and has principles of human rights, you notice that these principles have really been elevated to a higher plateau than ever before. This will mean that for good governance and good practice it's going to become necessary for more and more States and governments to base their ordinary processes of governance on the principles of the Charter in a way they have never had to do before.

Now, this suggests to me that the implications for the African Commission and for the African States are a lot greater than has been the case before. It means that the African Commission and its Secretariat has an even higher duty to raise awareness of the Charter and its principles throughout the continent. It means that more resources should be available for public awareness work of the African Commission and the Charter in order to enable precisely the principles that are the foundation of the Constitutive Act of the AU to become the basis of good governance which is conditional, which makes membership of the AU conditional on principles of human rights and good governance.

So it seems to me that the African Commission has to have a thrust of human rights education much stronger than it has ever been before, and that the resources for public human rights education within the Commission have to be very important. How does the African Commission do this? At the obvious level, the African Commission is working very closely with the African Centre for Democracy and Human Rights Studies. So, already since the very beginning of the African Commission it was always clear that their work must have a strong parallel phase for education in Africa. The Centre was established independently, with governmental support and backing to be focused very particularly on training and education of the principles of the African Charter. So that partnership between the Centre and the

Commission has been and is a very important relationship; both really have to be seen to be operating together. But the tendency all along has been to suggest that it was not necessary for the Commission itself to engage in human rights education, and that the Centre will do it all, and I think that's a mistake, because, in my opinion, if the partnership is going to be valuable, members as well as the Secretariat of the Commission have to work very closely with the Centre in the training programme that they have, in the thrust that they have in different parts of the African continent, and reporting back in terms of their awareness raising which they managed together. The main thrust has been to work with them, to equip them, to give a better understanding of the Charter and of its application, but also to engage training activities, based on the principles of the Charter, in the other countries.

But I suspect the one that was lacking most was to work just as strongly with governments and governmental officials concerning the Charter. The consequence at the end of the day is that NGOs throughout Africa are working very hard, but they do not always have the kind of support from governments that would be necessary to raise their awareness of the Charter in many countries. At the same time they have to co-operate with judicial officers and the legal profession, because the training of judges in Africa has become an important work. The judges of the constitutional court have begun to ask me for the decisions of the African Commission regularly. But until then they never ever received anything from the Commission, so the Chief of Justice regularly asks for the latest decisions. There is no other way in which it seems they're able to get them, and I think, certainly in the South-African context, it is important that judges receive, regularly throughout the continent, all the decisions of the African Commission. Judges, lawyers, prosecutors etc. need to be trained and informed about them in order to apply the Charter.

Then I think we need to move into the national sphere. The African Commission is by its nature a continental body that isn't always

deeply involved in the situations in particular countries. Necessities like education, training and public awareness will have to be focused on enabling, facilitating and understanding the Charter and its application in different situations. The monitoring relating to this work has to be at another level, which is about making sure that we receive complaints or communications from different countries because it provides the Commission with an opportunity to elaborate the principles of the Charter in the decisions we make in the Commission.

In the last five years the Commission has really been, through the efficient assistance of the legal officers of the Commission, paying a lot of attention to the elaboration of the principles of the Charter. So, now we start to build a body of jurisprudence, which would be helpful for people to understand the various principles of the Charter, interpreting and applying them. Because up to now there has been a general kind of feeling that we can't use the African Charter because it's not very helpful in particular principles. But I want to suggest that through the assistance of the interpretative work of the Commission, a lot of that is now very clearly elaborated and applied in particular situations. So, working with NGOs and ensuring that we receive complaints is an important mechanism of public awareness and education about the Charter and its principles.

A second element is to make sure that in the national spheres there are institutions and bodies which monitor human rights awareness and application, and strategically alert the Commission and the Centre about the needs of different countries and ensure that there is targeted public awareness and education focus to suit particular national situations.

I believe that the partnership between the Commission and NGOs is very vital in that way, which means that NGOs that are accredited as observers to the Commission actually do have a responsibility which goes beyond just attending Commission meetings, beyond just report-

ing on governments, important as that may be. It is actually about complementing the Commission and the Secretariat in their work with public education and awareness raising in the national sphere. It's that partnership which at times we have not received, because NGO-partners have not really utilised the resources the Commission actually has for their work concerning African human rights.

Thirdly, as I said before, hopefully in an accurate presentation about the African Charter and about the African Commission's work, the work of institutions and NGOs in public awareness and education is important. The Commission is best placed in most situations to make direct contacts with governments. This is done in different ways. One way is to assist governments in the presentation of their reports in terms of Article 62 of the Charter, which is their obligation. NGOs can work with governments to ensure that the reports accurately state the measures that have been taken to bring about the realisation of the rights in terms of Article 62. The presentation of a report by States Party to the Charter is one way of monitoring compliance with its provisions.

For a long time, I guess, the African Commission hasn't really been following up with States sufficiently, but I'm glad to say that in recent years more and more States have begun to present their reports. Although actually, there is still a large number of States which ratified the Charter as early as in 1983, 84, 86 that have not even presented one single report since that time. About 23 States, that's almost half of all the States, have not presented their obligatory report. The scandal of it is that a lot of them have had members sitting in the Commission for a great deal of the time during the life of the Commission but they never thought that this imposes an obligation on them to obey the principles of the Charter. We, as Commissioners, have allowed that to happen for a very long time. We start now putting measures in place, we say to those governments which can't give us the report, we will try to get one on the human rights situation in your country by some other means. I think that we had a great

debate on that again last year and some of the Commissioners were very unhappy about doing that to States. But it means that we have to advance, because there is no other way in which we could raise awareness of the principles of the Charter in the countries concerned. The Constitutive Act of the AU is becoming very important in assisting States to find means of adhering to the principles of the Constitutive Act that they have abided by, all 53 States are in fact members of the Constitutive Act. So, our work concerning Article 62 is important.

Besides the NGOs and Article 62, the African Commission has recognised in recent years the partnership with national institutions in all the countries where such institutions exist. It is true that there are only a few countries, in Africa that actually have national institutions, human rights commissions or similar bodies. The Commission believes that governments should work with national institutions on public education, awareness raising as well as with NGOs. One national institution in South Africa, the ICD, is already doing this, as well as the South African Human Rights Commission.

The amount of claims that have been made in South Africa since 1994 against the government for torture is enough to employ more police in order to investigate police violations in our country. So in a very strange sense torture actually undermines proper policing because it takes resources away from the budget of the police. Therefore the responsibility for the prevention of torture is also, in a country like ours, a part of what is necessary in order to make sure that there are resources to ensure effective policing in our country. All of us have got an interest in ensuring that there should be proper and effective policing.

That kind of education, about how certain things and actions actually impact upon the effectiveness of our work, is important.

National institutions then have a very important role here because they work more closely with the police and with other law-enforce-

ment agencies as well as with other national institutions in order to ensure the development of a culture of respect for human rights and non-violation of those in the effective execution of the task and the mandates that people have and their acknowledgement for themselves. So, national institutions are a key element in public education and public awareness raising around human rights and in particularly around torture.

I said at the beginning though, that we do pay a lot of attention to the law enforcement agencies. But there are clear developments in many countries, and certainly in South Africa, where it is a product, in some instances justified or not, of a lack of public confidence in the policing that we know. In Algeria there are self-help schemes which are a political measure to deal with the terrorist environment that exists there. In Zimbabwe it is part of the political environment.

We know that throughout Africa at the moment there is hardly any country that does not have enormous social, political, economic or other upheavals, and in almost all of those instances the role of non-State actors is coming into focus very sharply, because they are in other words people whose activity and motivation cannot be linearly traced straight to the security forces, and people who are acting out of their own political or other motivations to try to put some certain situations right.

In our country it comes across with a lot of vigilante organisations, Mpocho is a famous example; there was a case here in Cape Town where the community organised itself actually to go out and find alleged criminals and without any shame use violent or other methods to get the "truth" out of them, which can be considered torture. This occurs with the support of the community around them, because people believe that this is the only way in which crime gets solved and there have been very sad and painful instances where this has happened in our country today.

In the South African Human Rights Commission we try to work with many of these vigilante groups and forces to try to do some education and training work with them to get them to collaborate with the community police forums rather than to take the law into their own hands. So I'm suggesting we've got to find a way of addressing the question of non-State actors, because we make a mistake by thinking that all sorts of torture have to be addressed at the law-enforcement agencies. In part, the responsibility is to raise the level of public education and awareness about their rights, the responsibility that citizens have and in particular the responsibility to prevent crime in many instances in order to make sure that people participate in making their own community crime-free and working with the law-enforcement agencies in that process.

So my last word is really to say that the African Commission has to have a broad level of participation in all the countries and that whatever we come up with out of this exercise at the end of the day, can have no other purpose than to equip States, and NGOs to understand the principles of the Charter and to get engaged in the prevention of torture in their local sphere.

C. Closing Speeches

Closing remarks

by MARCO MONA,
President of the APT

Others have already pointed out how this island was meant, some decades ago, to break the will to freedom and equal rights and that the very opposite turned out. This setting here is just great for what we have just agreed upon!

You may imagine how happy we are about the outcome of this workshop.

Not only do they fit perfectly into the APT's work, the Robben Island Guidelines on prevention of torture in Africa are indeed one of our highlights we may very proudly show and exhibit. Rightly so: our founder Jean-Jacques Gautier's idea was not to do preventive work just for that part of the world which most obviously can afford it - actually this was the only reluctance Mr. Gautier had when the idea came up, in the eighties, to lower the priority for our most ambitious project of a universal instrument of prevention of torture and give the project of the European Convention for the Prevention of Torture temporarily more attention.

Now we have no reason to think that the work is over and done - for until the Guidelines become, as is our aim, a resolution of the African Commission, there is much to do. There was already quite an effort on spotting (and avoiding) future problems in the acceptance of the Guidelines and I am thankful about the fact that this has been generally accepted as a good way to deal with possible barriers which might still be ahead.

I say: good luck for the follow-up. We'd like of course to be with you in this, as discreetly but also as efficiently as possible.

Is it allowed to speak about the financial means necessary for such a project? Yes, it is, if it is only to acknowledge and to thank the generous donators. This workshop and its follow-up was made possible by contributions by the governments of the United Kingdom, of Canada and of Switzerland.

Finally I would like to thank the Honourable Justice Desai - his presence here is a true honour for our joint efforts to fight the plague of torture and ill-treatment.

Thanks to Mr. Commissioner Chigovera for his active and committed chairing of the workshop and for his further contribution to have the Robben Island Guidelines finally adopted by the African Commission on Human and Peoples' Rights. Thanks to the drafting group and the experts, and to Debra Long and Jean Baptiste Niyizurugero for their excellent work: did you ever notice how consuming and stressing this might have been? You did not; their calm and professional way of dealing with all the numerous requests has been exemplary. Keep in touch with them, they depend upon you and deserve it. Thanks also to all of you, it was a real pleasure and very stimulating to be here with you, I am certain that we'll meet again and I will look forward to it.

Good luck to all of you. Good luck to Antoinette Brink and her baby who will be born in March. Its for Antoinette's baby we are doing all this work, to grant her or him a better world, free of torture and ill-treatment, and this makes the work meaningful and worthwhile.

Closing remarks

by ANDREW CHIGOVERA,
Commissioner of the ACHPR

I would simply once again thank you and when I say thank you I'm not only talking about participants, but I'm including all those who have been enabled to communicate with each other at this meeting.

There was a question that was raised earlier on concerning the African Commission which I would like to come back to now. I had to recognise that the Commission was pretty invisible on the African continent. This is my third year in the African Commission and I'm aware that we have made every effort to ensure the visibility of the Commission at least in the last three years. During this period I think we have made an impact as a Commission, which may not be adequate, but certainly we have laid a foundation for better things for the Commission in terms of interesting stakeholders in human rights in Africa. For example our NGO community, which has an observer status with the African Commission, has grown tremendously. I may not be accurate on the statistics, but there are certainly over two hundred NGOs which have observer status with the Commission. We do not have many national institutions in Africa, I think they don't sit in, but most of them have affiliate status and also in the last two and a half years the participation of States Parties in the Commission sessions has increased, to the extent that around 29 States Parties are represented at those sessions. So I do believe we have made an impact and convinced States Parties of the importance of the Commission's work, and that each is for the benefit of everybody, their citizens, the State as a whole. I can only hope that we continue making further gains in that regard. While the compliance with the reporting obligations on the part of the State hasn't been impressive, it certainly has improved over the last couple of years. The Commission has also improved on the manner and on the method of considering those reports by the State Party, so there is a feedback to the State Party on the views of the Commission on those reports.

In so far as the way forward is concerned, the Statement and our conclusions as the Guidelines and Measures, will also be tabled before the NGO Forum just immediately before the session of the Commission. I'm very confident that the Commission will endorse the Guidelines with or without amendments and hopefully after this endorsement some programs for the implementation of those Guidelines including some of the recommendations that have been made such as holding workshops or training seminars.

As far as I am concerned, we should look forward to the results coming out of the Guidelines that we have adopted at this meeting. Certainly, you can share the Guidelines with the NGOs or other stakeholders back home where you go, because they need to anticipate that discussion at the NGO Forum in Pretoria in May, so you can share with them.

Finally I would like to thank the honourable judge Desai in find the time to come and be with us here and also accepting officially closing of our workshop.

Closing speech

by Mr. DESAI,
Judge at the High Court, Division of Cape Province, South Africa

It's indeed a humbling experience to make the concluding remarks on such a historic occasion. As a South African, as a human rights activist, and as a member of South Africa's new judiciary, it is my privilege to associate myself both with the deliberations and the statement which will be issued from this conference.

We in South Africa, as you all know, are new to democracy. In fact, we are sort of celebrating our first democracy. But what we have quickly learned is that building of democracy and democratic institutions is not an easy process. But in building such institutions we are also learning the increasing importance of international instruments, in our courts and in our practices. This is precisely the sort of instrument and statement that will aid and encourage our debate in this country. But if I deal pertinently with the issues of torture and ill-treatment, one must look telescopically at the history of Africa of the last one hundred years, one sees happy moments, but one also sees slavery, colonialism, apartheid and, in its worse form, genocide. Each of those manifestations, each form of tyranny in different parts and stages of Africa, was accompanied a legal and illegal torture and other forms of ill-treatment.

Now one can't possibly predict the future, but what is possible, and what you have been doing here today, is developing a culture of human rights in which torture and all forms of ill-treatment are anathema to the human spirit. That is precisely what should ring out, not only from this conference, but in all societies, so that if in a hundred years from now on we have to look back on Africa and indeed throughout the world one doesn't see the sort of aberration one saw the last few centuries in the human history.

The conclusions of this particular conference are taking place in a historic place, I can be a testimony to that. I defended many people in the Robben Island Institution, in this sort of prison, I know many people who have come from here. A common characteristic amongst them was and is the great courage and the dignity with which they resisted apartheid and how to create a new society. I think that is the spirit that has imbued this document as it is disseminated, the spirit of courage and of dignity. Courage to be able to say that what is in the Guidelines is correct, and dignity to confound those, logically and rationally, who would disregard them. That is the spirit that will develop and advance those human rights and a fairer society.

Thank you very much.

Part III

Outcome of the Workshop

Robben Island Statement

We, the participants at the Robben Island Workshop, organised by the Association for the Prevention of Torture (APT) in collaboration with the African Commission on Human and Peoples' Rights (The African Commission), held in Cape Town and on Robben Island from 12th to 14th February 2002;

Guided by the need for effective enforcement and implementation of mechanisms for the prohibition and the prevention of torture and other forms of ill-treatment in Africa;

Considering that the "Robben Island Guidelines" should be understood as a collective endeavour of the African community to deal with the phenomena of torture and to look forward to every person enjoying the right to be free from torture and other forms of ill-treatment;

Recommend that the African Commission:

- Adopt a resolution endorsing the "Robben Island Guidelines";
- Consider organising an orientation seminar with the support of other interested organisations to explain and present the "Robben Island Guidelines" to national and regional stakeholders;
- Include on its Agenda an item on the issue of torture in order to reflect on strategies for its prohibition and prevention;
- Consider including the issue of torture in the mandates of its Special Rapporteurs as well as incorporating torture on the checklist of Commissioners during their promotional missions;
- Raise awareness of the "Robben Island Guidelines" in order to complement the work of other stakeholders.

Robben Island 14th February 2002

Robben Island Guidelines

Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines).

Preamble

Recalling the universal condemnation and prohibition of torture, cruel, inhuman and degrading treatment and punishment;

Deeply concerned about the continued prevalence of such acts;

Convinced of the urgency of addressing the problem in all its dimensions;

Recognising the need to take positive steps to further the implementation of existing provisions on the prohibition of torture, cruel, inhuman and degrading treatment and punishment;

Recognising the importance of preventive measures in the furtherance of these aims;

Recognising the special needs of victims of such acts;

Recalling the provisions of:

- Art. 5 of the African Charter on Human and Peoples' Rights which prohibits all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment;

- Art. 45 (1) of the African Charter which mandates the African Commission to, inter alia, formulate and lay down principles and

rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation;

- Arts. 3 and 4 of the Constitutive Act of the African Union by which States Parties undertake to promote and respect the sanctity of human life, rule of law, good governance and democratic principles;

Recalling further the international obligations of States under:

- Art. 55 of the United Nations Charter, calling upon States to promote universal respect for and observance of human rights and fundamental freedoms;

- Art. 5 of the UDHR, Art. 7 of the ICCPR stipulating that no one shall be subjected to torture, inhuman or degrading treatment or punishment;

- Art. 2 (1) and 16 (1) of the UNCAT calling upon each State to take effective measures to prevent acts of torture and other acts of cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction;

Noting the commitment of African States as reaffirmed in the Grand Bay Declaration and Plan of Action adopted by the 1st Ministerial Conference on Human Rights in Africa to ensure better promotion and respect of human rights on the continent;

Desiring the implementation of principles and concrete measures in order to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment in Africa and to assist African States to meet their international obligations in this regard;

The ***"Robben Island Workshop on the Prevention of Torture"*** has adopted the following guidelines and measures for the prohibition and prevention of torture, cruel, inhuman and degrading treatment or punishment in Africa (The Robben Island Guidelines) and proposes that they are adopted, promoted and implemented within Africa.

Part I: Prohibition of Torture

Ratification of Regional and International Instruments

1. States should ensure that they are a party to relevant international and regional human rights instruments and ensure that these instruments are fully implemented in domestic legislation and accord individuals the maximum scope for accessing the human rights machinery that they establish. This would include:

   a) Ratification of the Protocol to the African Charter of Human and Peoples' Rights establishing an African Court of Human and Peoples' Rights;

   b) Ratification of or accession to the UN Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment without reservations, to make declarations accepting the jurisdiction of the Committee against Torture under Articles 21 and 22 and recognising the competency of the Committee to conduct inquiries pursuant to Article 20;

   c) Ratification of or accession to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and the First Optional Protocol thereto without reservations;

   d) Ratification of or accession to the Rome Statute establishing the International Criminal Court;

Promote and Support Co-operation with International Mechanisms

2. States should co-operate with the African Commission on Human and Peoples' Rights and promote and support the work of the Special Rapporteur on prisons and conditions of detention in Africa, the Special Rapporteur on arbitrary, summary and extra-judicial executions in Africa and the Special Rapporteur on the rights of women in Africa.

3. States should co-operate with the United Nations Human Rights Treaty bodies, with the UN Commission on Human Rights' thematic and country specific special procedures, in particular, the UN Special Rapporteur on Torture, including the issuance of standing invitations for these and other relevant mechanisms.

Criminalization of Torture

4. States should ensure that acts which fall within the definition of torture, based on Article 1 of the UN Convention against Torture, are offences within their national legal systems.

5. States should pay particular attention to the prohibition and prevention of gender-related forms of torture and ill-treatment and the torture and ill-treatment of young persons.

6. National courts should have jurisdictional competence to hear cases of allegations of torture in accordance with Article 5 (2) of the UN Convention against Torture.

7. Torture should be made an extraditable offence.

8. The trial or extradition of those suspected of torture should take place expeditiously in conformity with relevant international standards.

9. Circumstances such as state of war, threat of war, internal political instability or any other public emergency, shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.

10. Notions such as "necessity", "national emergency", "public order", and "ordre public" shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.

11. Superior orders shall never provide a justification or lawful excuse for acts of torture, cruel, inhuman or degrading treatment or punishment.

12. Those found guilty of having committed acts of torture shall be subject to appropriate sanctions that reflect the gravity of the offence, applied in accordance with relevant international standards.

13. No one shall be punished for disobeying an order that they commit acts amounting to torture, cruel, inhuman or degrading treatment or punishment.

14. States should prohibit and prevent the use, production and trade of equipment or substances designed to inflict torture or ill-treatment and the abuse of any other equipment or substance to these ends.

Non-Refoulement

15. States should ensure no one is expelled or extradited to a country where he or she is at risk of being subjected to torture.

Combating Impunity

16. In order to combat impunity States should:

a) Ensure that those responsible for acts of torture or ill-treatment are subject to legal process.

b) Ensure that there is no immunity from prosecution for nationals suspected of torture, and that the scope of immunities for foreign nationals who are entitled to such immunities be as restrictive as is possible under international law.

c) Ensure expeditious consideration of extradition requests to third States in accordance with international standards.

d) Ensure that rules of evidence properly reflect the difficulties of substantiating allegations of ill-treatment in custody.

e) Ensure that where criminal charges cannot be sustained because of the high standard of proof required, other forms of civil, disciplinary or administrative action are taken if it is appropriate to do so.

Complaints and Investigation Procedures

17. Ensure the establishment of readily accessible and fully independent mechanisms to which all persons can bring their allegations of torture and ill-treatment.

18. Ensure that whenever persons who claimed to have been or who appear to have been tortured or ill-treated are brought before competent authorities an investigation shall be initiated.

19. Investigations into all allegations of torture or ill-treatment shall be conducted promptly, impartially and effectively, guided by the UN Manual on the Effective Investigation and Documentation of

Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol).[35]

Part II: Prevention of Torture

Basic Procedural Safeguards for those Deprived of their Liberty

20. All persons who are deprived of their liberty by public order or authorities should have that detention controlled by properly and legally constructed regulations. Such regulations should provide a number of basic safeguards, all of which shall apply from the moment when they are first deprived of their liberty. These include:

    a) The right that a relative or other appropriate third person is notified of the detention;

    b) The right to an independent medical examination;

    c) The right of access to a lawyer;

    d) Notification of the above rights in a language which the person deprived of their liberty understands;

Safeguards during the Pre-trial Process

States should :

21. Establish regulations for the treatment of all persons deprived of their liberty guided by the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.[36]

35 Annexed to UN GA Res. A/55/89, 4 Dec. 2000, UN Publication No.8, HR/P/PT/8.
36 UN GA/Res. 43/173, 9 Dec.1988

22. Ensure that criminal investigations are conducted by those subject to the relevant codes of criminal procedure.

23. Prohibit the use of unauthorised places of detention and ensure that it is a punishable offence for any official to hold a person in a secret and/or unofficial place of detention.

24. Prohibit the use of incommunicado detention.

25. Ensure that all detained persons are informed immediately of the reasons for their detention.

26. Ensure that all persons arrested are promptly informed of any charges against them.

27. Ensure that all persons deprived of their liberty are brought promptly before a judicial authority, having the right to defend themselves or to be assisted by legal counsel, preferably of their own choice.

28. Ensure that comprehensive written records of all interrogations are kept, including the identity of all persons present during the interrogation and consider the feasibility of the use of video and/or audio taped recordings of interrogations.

29. Ensure that any statement obtained through the use of torture, cruel, inhuman or degrading treatment or punishment shall not be admissible as evidence in any proceedings except against persons accused of torture as evidence that the statement was made.

30. Ensure that comprehensive written records of those deprived of their liberty are kept at each place of detention, detailing, inter alia, the date, time, place and reason for the detention.

31. Ensure that all persons deprived of their liberty have access to legal and medical services and assistance and have the right to be visited by and correspond with family members.

32. Ensure that all persons deprived of their liberty can challenge the lawfulness of their detention.

Conditions of Detention

States should :

33. Take steps to ensure that the treatment of all persons deprived of their liberty are in conformity with international standards guided by the UN Standard Minimum Rules for the Treatment of Prisoners.[37]

34. Take steps to improve conditions in places of detention which do not conform to international standards.

35. Take steps to ensure that pre-trial detainees are held separately from convicted persons.

36. Take steps to ensure that juveniles, women, and other vulnerable groups are held in appropriate and separate detention facilities.

37. Take steps to reduce overcrowding in places of detention by, inter alia, encouraging the use of non-custodial sentences for minor crimes.

37 UN ECOSOC Res. 663 C (XXIV), 31 July 1957, amended by UN ECOSOC Res. 2076 (LXII), 13 May 1977

Mechanisms of Oversight

States should :

38. Ensure and support the independence and impartiality of the judiciary including by ensuring that there is no interference in the judiciary and judicial proceedings, guided by the UN Basic Principles on the Independence of the Judiciary.[38]

39. Encourage professional legal and medical bodies to concern themselves with issues of the prohibition and prevention of torture, cruel, inhuman and degrading treatment or punishment.

40. Establish and support effective and accessible complaint mechanisms which are independent from detention and enforcement authorities and which are empowered to receive, investigate and take appropriate action on allegations of torture, cruel, inhuman or degrading treatment or punishment.

41. Establish, support and strengthen independent national institutions such as human rights commissions, ombudspersons and commissions of parliamentarians, with the mandate to conduct visits to all places of detention and to generally address the issue of the prevention of torture, cruel, inhuman and degrading treatment or punishment, guided by the UN Paris Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights.[39]

42. Encourage and facilitate visits by NGOs to places of detention.

43. Support the adoption of an Optional Protocol to the UN-CAT to create an international visiting mechanism with the mandate to

38 UN Doc. E/CN.4/1995/39.
39 UN A/Res/48/134, 20 Dec. 1993.

visit all places where people are deprived of their liberty by a State Party.

44. Examine the feasibility of developing regional mechanisms for the prevention of torture and ill-treatment.

Training and Empowerment

45. Establish and support training and awareness-raising programmes which reflect human rights standards and emphasise the concerns of vulnerable groups.

46. Devise, promote and support codes of conduct and ethics and develop training tools for law enforcement and security personnel, and other relevant officials in contact with persons deprived of their liberty such as lawyers and medical personnel.

Civil Society Education and Empowerment

46. Public education initiatives, awareness-raising campaigns regarding the prohibition and prevention of torture and the rights of detained persons shall be encouraged and supported.

48. The work of NGOs and of the media in public education, the dissemination of information and awareness-raising concerning the prohibition and prevention of torture and other forms of ill-treatment shall be encouraged and supported.

Part III: Responding to the Needs of Victims

49. Ensure that alleged victims of torture, cruel, inhuman and degrading treatment or punishment, witnesses, those conducting the investigation, other human rights defenders and families are

protected from violence, threats of violence or any other form of intimidation or reprisal that may arise pursuant to the report or investigation.

50. The obligation upon the State to offer reparation to victims exists irrespective of whether a successful criminal prosecution can or has been brought. Thus all States should ensure that all victims of torture and their dependents are:

a) Offered appropriate medical care;

b) Have access to appropriate social and medical rehabilitation;

c) Provided with appropriate levels of compensation and support;

In addition there should also be a recognition that families and communities which have also been affected by the torture and ill-treatment received by one of its members can also be considered as victims.

Annexes

Annex I: Programme of the Workshop 12 – 14 February 2002, Cape Town and Robben Island

PROGRAMME OF TUESDAY 12 FEBRUARY

Pavilion Conference Centre, Portswood Road, Cape Town

- ***Opening session:***

09.00 Registration of participants

09.20 Opening Remarks **by Mr. Marco Mona**, *APT President, and Andrew Chigovera, Commissioner of the African Commission on Human and Peoples' Rights*

09.30 Opening speech **by Dr Maduna**, *Minister of Justice and Constitutional Development, South Africa*

09.50 Close of opening remarks and photograph session

- ***Morning session: Review of possible legal (legislative, administrative, judicial...) measures to prevent torture and ill-treatment***

10.00 Presentation on legal measures required to prevent torture and ill-treatment by **Prof. Malcolm Evans**, *Bristol University,UK*

10.20 Presentation on measures required in combating impunity to prevent torture and ill-treatment by **Mr. Mabassa Fall**, *International Federation of Human Rights (FIDH)*

10.40 Tea/coffee break

11.00 Responses from workshop participants (General discussion on legal measures)

11.45 Presentation on regulations on the treatment of persons deprived of liberty by **Dr. Tertius Geldenhuys** and **Mrs. Antoinette Brink**, *South African Police Services*

12.00 Responses from workshop participants

12.30 Lunch

- ***Afternoon session: Review of possible control, training and empowerment measures to prevent torture and ill-treatment***

14.00 Presentation on the visiting mechanisms required to prevent torture and ill-treatment by **Mr. Patrick Zahnd**, *ICRC Representative in Southern Africa* and **Prof. Renate Kicker**, *Member of the European Committee for the Prevention of Torture (CPT)*

14.40 Responses from workshop participants

15.20 Presentation on training measures for police and prison officials by **Dr. Tertius Geldenhuys**, *South African Police Services*

15.40 Coffee break

16.00 Presentation on the role of NGOs in training, information and sensitisation initiatives to prevent torture and ill-treatment by **Mrs. Hannah Forster**, *African Centre for Democracy and Human Rights Studies (ACDHRS)*

16.20 Responses from workshop participants

17.00 Presentation on rehabilitation and reparation measures required to prevent torture and ill-treatment by **Mr. Michael Lapsley**, *Institute for Healing of Memories, South Africa*

17.15 Responses from workshop participants

17.45 Rapporteur's concluding observations of the work of the day

18.00 Close of first day

PROGRAMME OF WEDNESDAY 13 FEBRUARY

- ***Morning session: Review of possible measures on public education and on complaints mechanisms***

09.00 Presentation on complaints mechanisms to prevent torture and ill-treatment by **Advocate Karen McKenzie**, *Independent Complaints Directorate (ICD), South Africa*

09.20 Presentation on measures required on "public education, sensibilisation, awareness" to prevent torture and ill treatment by **Dr. Barney Pityana**, *Commissioner of the African Commission on Human and Peoples Rights*.

09.40 Responses from workshop participants (General discussion on all presentations)

10.30 Coffee break

11.45 Plenary discussion on a preliminary draft based on provisions collected from presentations and previous discussions.

12.30 Lunch

- ***Afternoon session: drafting, discussion and agreement on draft proposals***

14.00 Plenary discussion on draft proposals

15.45 Coffee break

16.00 Plenary discussion on draft proposals continue

16.55 Break

17.15 Plenary discussions on draft proposals continue

18.00 Close of the day

PROGRAMME OF THURSDAY 14 FEBRUARY

- ***Morning: Robben Island tour visit and final drafting***

09.00 Departure from Cape Town to Robben Island, Boat departs V & A Waterfront, Nelson Mandela Gateway

09.30 Tour visit of Robben Island

11.00 Tea/coffee break

11.30 Plenary review of final draft of the Guidelines

12.30 Lunch

- ***Afternoon: Approval of the "Robben Island Guidelines" and closing ceremony***

14.00 Plenary agreement on the provisions of the final text of the "Robben Island Guidelines"

15.30 Tea/coffee break

16.00 Closing ceremony

17.15 Board bus & transport to harbor

17.30 Tour of harbor area

18.00 Boat departs Robben Island

18.30 Boat arrives V&A Waterfront, Nelson Mandela Gateway

19.30 Reception in Cape Town

Annex II: Participants at the Workshop
12 – 14 February 2002, Cape Town and Robben Island

Guests of Honour

- **Opening Ceremony:**

  Dr. P. Maduna, Minister of Justice and Constitutional Development
  South Africa

- **Closing Ceremony:**

  Mr. Desai, Judge at the High Court, Division of Cape Province
  South Africa

Participants

Name and Organisation	Contact Details
• ***From the African Commission on Human and Peoples' Rights***	
1. Mr. **Andrew Chigovera** Commissioner to the African Commission on Human and Peoples' Rights	Address: P.O Box 7714 Causeway, Harare, Zimbabwe Telephone: +263 4 774 585 Mobile: +263 11 605 699 Fax: + 263 4 773 247 Email:N/A
2. Mr. **Barney Pityana** Commissioner to the African Commission on Human and Peoples' Rights	Address: P.O Box 392; Unisa 0003 South Africa Telephone:+27 12 429 2550 Mobile:+27 832 841 754 Fax:+27 12 429 2565 Email:pityanab@unisa.ac.za

3. Mr. **Germain Baricako**
Secretary to the
African Commission on
Human and Peoples' Rights

Address:
90 Kairaba Avenue
P.O. Box 673 Banjul
The Gambia
Telephone: +220 392 962
Mobile:+220 922 089
Fax:+220 390 764
Email:secretary@achpr.gm

4. Mrs. **Fiona Adolu**
Legal Officer to the
African Commission on
Human and Peoples' Rights

Address:
90 Kairaba Avenue
P.O. Box 673 Banjul
The Gambia
Telephone: +220 392 962
Mobile:+220 922 104
Fax:+220 390 764
Email:fionadolu@yahoo.com

• ***Other African and international experts***

5. Prof. **Renate Kicker**
European Committee for the
Prevention of Torture

Address:
Institute of International Law
University of Graz
Universitätsstrasse 15/A4
A-8040 Graz
Austria
Telephone:+43 316 380 3414
Mobile:N/A
Fax: +43 316 380 9455
Email:
renate.kicker@kfunigraz.ac.at

6. Mr. **Jody Kollapen**
Deputy Chairperson of the
South African Human Rights
Commission

Address:
Private Bag 2700
Houghton 2014
Johannesburg - South Africa
Telephone:+27 11 484 8300
Mobile: 083 165 3611
Fax: +27 11 484 8403
Email: jkollapen@sahrc.org.za

7. Mrs. **Antoinette Brink** South African Police Services	Address: Private Bag X94, Pretoria 0001 South Africa Telephone:+27 12 339 1761 Mobile:082 808 3737 Fax:+27 12 339 1748 Email:geldenhuyst@saps.org.za
8. Mr. **Ephrem Gasasira** Lawyer Member of the Brussels Bar	Address: Boulevard Léopold II, 227 1080-Bruxelles - Belgium Telephone: +32 2 252 0130 Mobile: 047 8964 327 Fax: +32 2 252 0130 Email:gasasieph@hotmail.com
9. Mrs. **Mimsie Mosarwa** Legal Officer Botswana Police Service	Address: Private Bag 0024 Gaborone - Botswana Telephone:+267 3951161 Mobile:+267 722 21616 Fax:+267 3973 723 Email: mmosarwa@gov.bw
10. Prof. **Malcolm Evans** Bristol University	Address: Faculty of Law Wills Memorial Building Queens Road, Bristol BS8 1RJ. UK Telephone: +44 117 954 5335 Mobile:N/A Fax:+44 117 925 1870 Email: M.C Evans@Bristol.ac.uk
11. Mr. **Mabassa Fall** International Federation for Human Rights (FIDH),	Address: 117 Avenue Balise Diague Dakar - Senegal Telephone: +221 821 7224 / 821 3729 Mobile:N/A Fax:+221 822 0241 Email: msp@telecomplus.sn

12. Advocate **Karen McKenzie** Executive Director Independent Complaints Directorate	Address: 388 Andries Street Pretoria - South Africa Telephone:+27 12 392 0401 Mobile:083 453 9757 Fax:+27 12 320 0474 Email:kmckenzi@icd.pwv.gov.za
13. Mr. **Shadrack Mahlangu** Independent Complaints Directorate	Address: 388 Andries Street Pretoria 0002 - South Africa Telephone:+27 12 392 0400 Mobile:082 808 7574 Fax:+27 12 320 3116 Email:smahlangu@icd.pwv.gov.za
14. Mr. **Tommy Tshabalala** Independent Complaints Directorate	Address: 388 Andries Street Pretoria, 0001 - South Africa Telephone:+27 12 392 0400 Mobile:082 923 4749 Fax:+27 12 392 0454 Email:ttommmy@icd.pwv.gov.za
15. Mrs. **Hannah Forster** Executive Director of the African Centre for Democracy and Human Rights Studies	Address: A.C.D.H.R.S P.O. Box 2728 Serrekunda The Gambia Telephone:+220 462 340/2 Mobile:N/A Fax:+220 462 338/9 Email: acdhrs@acdhrs.org edir@acdhrs.org
16. Mr. **Guy Aurenche** International Federation of Action by Christians for the Abolition of Torture (FIACAT)	Address: Fi.ACAT 27 Rue de Maubeuge Fr 75009, Paris - France Telephone:+33 142 800 160 Mobile:+33 608062753 Fax:+33 142 809 089 Email:Fi.acat@wanadoo.fr

17. Dr. **Tertius Geldenhuys**
South African Police Services

Address:
South African Police Services
Private Bag X94 Pretoria 0001
South Africa
Telephone:+27 12 339 1370
Mobile:+27 836269108
Fax:+27 12 339 1748
Email:geldenhuyst@saps.org.za
tertiusg@freemail.absa.co.za

18. Mrs. **Henrietta Didigu**
Legal Officer
Economic Community
of West Africa States
(ECOWAS)

Address:
ECOWAS Secretariat
60 Yakubu Gowan Crescent
Asokara, Abuja - Nigeria
Telephone:+234 9 314 7432
Mobile:N/A
Fax:+234 9 314 3005
Email:hudidigu@ecowasmail.net

19. Mr. **Patrick Zahnd**
Representative of the
International Committee
of the Red Cross (ICRC)

Address:
790, 794 Church Street
P.O. Box 29001
0132 Sunnyside - Pretoria
South Africa
Telephone:+27 12 430 7335
Mobile:+27 82 653 2734
Fax:+27 12 430 4471
Email:icrcpre@wn.apc.org

20. Father **Michael Lapsley**
Institute for Healing of
Memories

Address:
2 Lente Road Sybrand Point
7708 Cape Town
South Africa
Telephone:+27 21 696 4230
Mobile:082 416 2766
Fax:+27 21 697 4773
Email:healing@mindspring.co.za

21. Prof. **Shabbir Wadee**
Dept. of Forensic Medicine at the Stellenbosch University

Address:
Forensic Medicine
Private Bag X13 Tygerberg
7505 Cape Town
South Africa
Telephone:+27 21 931 8043
Mobile: N/A
Fax:+27 21 933 3367
Email:saw@sun.ac.za

22. Mrs. **Sheila Keetharuth**
Amnesty International

Address:
La Source
Central Flacq
Mauritius
Telephone:+230 210 0924
Mobile:N/A
Fax:+230 211 5927
Email: sheila.k@intnet.mu

23. Mr. **Vincent Saldanha**
Legal Resources Centre

Address:
54 Shortmarket Street
Cape Town
South Africa
Telephone:+27 21 423 8285
Mobile:N/A
Fax:+27 21 423 0935
Email:vincent@lrc.org.za

24. Mr. **Honoré Tougouri**
President of the African Penitentiary Association

Address:
Association Pénitentaire Africaine
01 BP 5671 Ougagoudou 01
Burkina Faso
Telephone: +226 36 4286
Mobile: +226 21 2559
Fax: +226 36 4375
Email:
tougourihonore@hotmail.com

• ***From the APT***

25. Mr. **Marco Mona** President	Address: Laugstrane 4 Ch-8004 Zürich Switzerland Telephone:+41 1 241 3280 Mobile: N/A Fax:+41 1 24 4056 Email:mmona@mydiax.ch
26. Mr. **Jean-Baptiste Niyizurugero** Africa Programme Officer	Address: Route de Ferney 10 Case Postale 2267 CH-1211, Genève 2 Switzerland Telephone: + 41 22 919 2175 Mobile: + 33 6 82 97 79 18 Fax: +41 22 919 2180 Email: jbn@apt.ch
27. Mrs. **Debra Long** Programme Advisor	Address: Route de Ferney, 10 Case Postale 2267 CH-1211, Genève 2 Suisse Telephone: +41 22 919 2176 Mobile: +07789 725441 Fax: +41 22 919 2180 Email: dlong@apt.ch

"We want Robben Island to reflect the triumph of freedom and human dignity over oppression and humiliation."

Ahmed Kathrada, Prisoner 468/64
Robben Island 1964-1982

Preventing Torture in Africa

The Association for the Prevention of Torture (APT) is an independent non-governmental organisation committed to working internationally to tackle the global problem of torture and ill-treatment. It has programmes that cover activities in Africa, Americas, Europe, Asia and the United Nations. The APT Africa Programme works with African national institutions, inter-governmental mechanisms, as well as African national and regional NGOs, in order to develop local solutions, based on international and regional norms and standards, to prevent torture and ill-treatment in Africa.

Prevention implies co-operation, search for dialogue and innovative approaches. It is in this context that the APT and the African Commission on Human and Peoples' Rights (ACHPR) organised a joint workshop and formulated guidelines and measures (Robben Island Guidelines) designed to assist States to meet their national, regional and international obligations for the effective enforcement and implementation of the universally recognised prohibition and prevention of torture.

The Robben Island Guidelines were endorsed by the ACHPR during its 32nd session held from 17 to 23 October 2002. They have now to be promoted and implemented. Their effective implementation will need the co-operation and endeavour of several actors such as appropriate African State authorities, Parliamentarians, national Human Rights Institutions and all civil society.

The Robben Island Guidelines were adopted in a symbolic place for Africa, the island where activists against the South African Apartheid regime were detained for many years. The prison was built in order to humiliate and destroy peoples' spirit but through the tenacity and perseverance of people such as Nelson Mandela it became a symbol of reconciliation and a shared humanity.

Ahmed Katharada, one of the Robben Island former detainees, said: "*We want Robben Island to reflect the triumph of freedom and human dignity over oppression and humiliation*". The APT wishes the Robben Island Guidelines to symbolise the starting of a new era for the eradication and the prevention of torture in Africa.