



The University of
Nottingham

Human Rights Law Centre

**MONITORING OF ASYLUM-SEEKERS, REFUGEES AND
OTHER MIGRANTS IN DETENTION: INTERNATIONAL,
REGIONAL AND NATIONAL HUMAN RIGHTS
MECHANISMS**

**TOOLKIT
FOR
HUMAN RIGHTS ADVOCATES AND PRACTITIONERS**

**Forced Migration and Human Rights Unit
Human Rights Law Centre
University of Nottingham
University Park
Nottingham NG7 2RD
Tel. +44 115 84 68164
Fax. +44 115 951 5696
Email. FMHRUnit@nottingham.ac.uk
Web www.nottingham.ac.uk/law/hrlc**

PREFACE

The University of Nottingham Human Rights Law Centre is committed to the promotion and protection of human rights and fundamental freedoms and the establishment and strengthening of the rule of law worldwide. It carries out its mandate by means of research, publications, training, and capacity building. The Centre undertakes research projects, and advises and trains governments, international organisations, and non-governmental organisations.

Nine operational units reflect and define the expertise of the Centre. The Forced Migration and Human Rights (FMHR) Unit was established in January 2008. It is dedicated to the study and research of all areas of forced migration, including international protection/asylum, human trafficking, internal displacement, statelessness, and migration. The unit addresses issues of displacement within a broad context of international human rights.

This *Toolkit on Monitoring of Asylum-Seekers, Refugees and Other Migrants in Detention: International, Regional and National Human Rights Mechanisms*, shows the inter-linkages between human rights mechanisms and the protection of forced migrants. It demonstrates that there are a myriad of human rights mechanisms available to advocates and practitioners that can be utilised in the forced migration context. In fact, it is no longer possible to treat and deal with issues of forced migration in isolation of the pressing human rights issues that arise and that confront asylum-seekers, refugees and other migrants everyday. We are pleased to present this Toolkit to the NGO community and we trust it will be of benefit to those working in this area.

For more information on the work of the Centre and the FMHR Unit, please consult our website: www.nottingham.ac.uk/law/hrlc

We wish you all the best in your work on behalf of forced migrants,

David Harris
Emeritus Professor of Law
Co-Director
Human Rights Law Centre
School of Law
University of Nottingham

Michael O'Flaherty
Professor in Applied Human Rights
Co-Director
Human Rights Law Centre
School of Law
University of Nottingham

20 June 2008

TABLE OF CONTENTS

Purpose and Scope of this Toolkit	4-5
NATIONAL MECHANISMS	6-7
UN CHARTER MECHANISMS	8-15
Human Rights Council Universal Periodic Review	8-9
Human Rights Council Complaints Procedure	9-10
UN Working Group on Arbitrary Detention	10-11
UN Special Rapporteurs	11-13
UN Representative to the Secretary-General on the Human Rights of Internally Displaced Persons	14-15
UN HUMAN RIGHTS TREATY BODIES	16-21
UN Human Rights Treaty Bodies – State Reporting	16-17
UN Human Rights Treaty Bodies (HRC; CERD; CAT; CEDAW) – Individual Communications Procedures	17-18
UN Human Rights Treaty Bodies (CAT; CEDAW) – Fact-Finding or Inquiry Procedures	18-19
UN Sub-Committee on the Prevention of Torture – Visits to Places of Detention	19-21
THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR)	22
INTERNATIONAL COMMITTEE OF THE RED CROSS	23-24
INTER-AMERICAN SYSTEM	25-29
Inter-American Commission on Human Rights	25-26
Inter-American Court of Human Rights	26-27
Inter-American Special Rapporteur on the Rights of Persons Deprived of their Freedom	27-28
Inter-American Special Rapporteur on the Rights of Migrant Workers and Their Families	28-29
AFRICAN SYSTEM	30-34
African Commission on Human Rights	30-31
African Court on Human and Peoples’ Rights	31
Special Rapporteur on Prisons and Conditions of Detention in Africa	32
Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons in Africa	33
Special Rapporteur on the Rights of Women in Africa	34
EUROPEAN SYSTEM	35-38
European Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT)	35-36
European Court of Human Rights	36-37
Council of Europe Commissioner for Human Rights	38

PURPOSE AND SCOPE OF THIS TOOLKIT

This Toolkit was prepared in advance of the Annual Consultations between the United Nations High Commissioner for Refugees (UNHCR) and non-governmental organisations (NGOs) held in June 2008, as part of a panel on the use of human rights mechanisms in the monitoring of detention conditions of asylum-seekers, refugees, and other migrants. It is hoped that this Toolkit may be beneficial to non-governmental organisations, human rights groups, advocates, and practitioners who work with and for individuals and groups in detention, in their efforts to secure the release of, or better conditions for, those detained. Of course, some of the mechanisms outlined in this Toolkit can also be used in other contexts of human rights violations.

This Toolkit outlines some of the main international and regional mechanisms that have the mandate to monitor or visit places of detention or individuals held in detention or detention-like conditions. It also highlights some of the available judicial or quasi-judicial mechanisms, which arbitrate cases relating to detention. It identifies the legal basis establishing the various mechanisms, their mandates and their main activities, and the legal effect (whether their views are binding or non-binding) of their work and findings. Contact information is also supplied to aid non-governmental organisations with their interventions with the relevant bodies. This information is valid as at 20 June 2008. However, if you wish to use any of these mechanisms, please consult more detailed information available through the website of the relevant body (websites are included in the main body of this document).

The Toolkit also outlines a number of other monitoring mechanisms that may be available at the national level, such as detention inspectorates, offices of ombudsman, national bodies dealing with refugees and other migrants, national courts, and national human rights commissions or institutions. Those using this guide are advised that this information has been compiled generically, and that variations are evident between countries.

As there is no fixed strategy for the best way to monitor detention conditions, it is necessary that all avenues are considered and choices made about the most appropriate mechanism to utilise. Efforts to secure the release of or improve the conditions of persons in detention often need to be flexible to the individual, the situation and the country at hand. With this in mind, national mechanisms may often be the first port of call for individuals and organisations working on detention issues, with the international and regional mechanisms being available as a secondary source should domestic efforts fail. International mechanisms include confidential reporting, country monitoring, individual complaints, and political pressure.

The question of which mechanism(s) to utilise will be dependent on a range of factors specific to your particular situation, such as the mandate of the body to act, including their jurisdiction over the country in question, the principal focus (whether preventive or aimed at remedial action post-abuse, including release from detention), the ability of the body to respond quickly, the influence of any findings or recommendations (including whether their decisions are legally binding or non-binding, or otherwise influential), the public or confidential nature of the mechanisms, whether they deal with individuals, situations or both, or the willingness and openness of the body to collaborate with and to receive information from NGOs.

This Toolkit does not outline the many legal obligations of states relating to detention and detention conditions, but there are other useful documents available, such as Amnesty International, *Migration-related Detention: A Research Guide on Human Rights Standards relevant to the Detention of Migrants, Asylum-Seekers and Refugees* (2007), Jesuit Refugee Service, *Europe Handbook for visitors and workers in detention* (2006), and Association for the Prevention of Torture (APT), *Monitoring Places of Detention: A Practical Guide* (2004).¹

¹ These documents and others of a similar nature and in other languages are available from the International Detention Coalition, at: www.idcoalition.org. See, also, on questions of why and how to report on torture or other forms of ill-treatment, C. Giffard, *The Torture Reporting Handbook* (Human Rights Centre, University of Essex, undated), available at: <http://www.essex.ac.uk/torturehandbook/index.htm> (note that it is not up to date).

The Forced Migration and Human Rights Unit of the Human Rights Law Centre at the University of Nottingham would like to thank Monica Esposito for her excellent and diligent research in putting together drafts of this Toolkit in a very short period of time. We would also like to especially thank Adriano Silvestri (UNHCR), Grant Mitchell (International Detention Coalition), and Andrew Gallea De Bono (Jesuit Refugee Service), and others for their thoughtful comments and input into this document. We hope that this document will be beneficial in strategising in relation to the detention of asylum-seekers and refugees, which is becoming an increasingly common occurrence in many parts of the world.

Any errors are the responsibility of the authors, but please do not hesitate to contact the Forced Migration and Human Rights Unit of the Human Rights Law Centre, University of Nottingham, with any comments or suggestions on the text: FMHRUnit@nottingham.ac.uk. In particular, we'd be interested to hear how the mechanisms have been used effectively by NGOs in order to be able to update this document.

Alice Edwards
Head, Forced Migration and Human Rights Unit
Lecturer in Law
Human Rights Law Centre
School of Law
University of Nottingham
20 June 2008

NATIONAL MECHANISMS

Most countries have a number of national and local mechanisms that can be used for detention monitoring. Some are formal, officially established national mechanisms set up with the specific task of detention monitoring. Other more local mechanisms, such as Detention Visitor Groups and NGOs that visit detention centres, generally do not have a formal role, but can also be effective. The different mechanisms available at a domestic level are too varied in structure and function from country to country to be described here exhaustively. Nevertheless, this section will highlight some viable, national and local options for detention monitoring. Since the use of national or local options is generally quicker and possibly more effective than regional or international alternatives, those wishing to monitor detention centres in a specific country are encouraged to explore what options are available to them in that country. In cases of countries having no official monitoring mechanisms and where access to outsiders is generally limited, it is important to identify those who have access to detention centres, such as lawyers, health professionals and religious chaplains, and to work in partnership with them.

The national judicial system – The judicial system in some countries includes periodical monitoring by the courts, which takes place at least once per year. Nevertheless, in most other cases, the judicial system can still offer a remedy for human rights violations or inadequate conditions inside a detention centre. In the case where a detainee is denied access to legal assistance, recourse to a local court can assist a lawyer to enter a detention centre to visit his/her client. Ensuring access to a legal representative for all detainees can guarantee ongoing informal monitoring of detention centres. A national or local court can also order an inquiry of a detention centre in cases of suspected violations of the law taking place inside that centre. Some legal systems have what is called a writ of "*habeas corpus*" - a legal action, or writ, through which a person can seek to be released from unlawful detention of themselves or another person.

Independent Commissions / Detention Inspectorates – Independent Commissions or Inspectorates have been officially set up in some countries with the scope of monitoring detention centres. These official bodies are generally made up of a panel of experts who, depending on the role given to them in a particular country, could have the function of periodically monitoring detention centres and can also receive reports or petitions made by detainees or others aware of violations of rights and poor conditions in particular centres.

Internal mechanisms for monitoring – In some countries, the detention system includes internal monitoring mechanisms, administrative bodies charged with monitoring the conditions in one or more centres. Unfortunately, it is not really possible to assess the actual independence of these internal monitoring mechanisms.

Ombudsman – An ombudsman is an impartial and independent official, usually appointed by the government or parliament, who has the role of representing the interests of the public by investigating and addressing complaints reported by individual citizens. In countries which have an ombudsman (in some jurisdictions referred to as a 'Parliamentary Commissioner'), a complaint can be made to this person or his/her office to ask for an investigation into an alleged abuse that is taking place inside a detention centre. The ombudsman will investigate such complaints if he/she is deemed to have jurisdiction over the case and if there is enough evidence to warrant an investigation. The ombudsman will then take steps to secure redress for the complainant – though the recommendations made are generally not legally binding on the authorities.

National Human Rights Commissions – A National Human Rights Commission is a body set up to investigate complaints and protect human rights. Its functions differ among the countries that have such a body in place – generally varying between single, dual and multi-organ systems. A single system is one in which there is either only a human rights commission, which can deal with complaints concerning the infringement of human rights in general, or an ombudsman institution with a general competence to investigate claims from citizens. A dual system is one in which there is both a national human rights commission and an ombudsman institution. A multiple organ system is a legal system in which there are a variety of human rights and ombudsman institutions each having a specific and limited competence, which could also include detention monitoring.

Detention Visitor Groups – Detention Visitor Groups are either formally or informally set up by and in support of individuals and groups of visitors to detainees. Such groups can encourage and enable others to reach out to detainees. These groups can represent visitors and detainees before the authorities or official monitoring bodies, collecting and communicating information on detention conditions and practices. Encouraging, when possible, ordinary citizens to visit detention centres creates an environment of constant informal monitoring that acts as a deterrent against abuse within the centres and rendering such abuses more likely to be discovered if they are taking place.

NGOs working inside detention centres – In some countries, there is a formal agreement between public authorities and NGOs to monitor conditions in the centres. In countries where such an agreement does not exist, the presence of NGOs providing services inside a detention centre does not generally constitute a formal monitoring mechanism. Nevertheless, the presence of independent civil society groups inside a detention centre ensures that detainees have contact with the outside world and that, therefore, abuses suffered by the detainees do not go unnoticed. The presence of NGOs generally helps to ensure that the conditions inside detention centres are of an acceptable standard. NGOs can also keep note of detention conditions and any possible abuse taking place inside the detention centres and report this to the appropriate authority or official monitoring body. The monitoring activities of NGOs should neither preclude nor replace the role of any public institution with legal jurisdiction over detention facilities in country but should be seen as complementary to those of a public monitoring institution.

National Red Cross and Red Crescent Societies – Some national Red Cross and Red Crescent societies visit detention centres as part of their humanitarian mandate, establishing a dialogue both with detaining authorities and detainees. As neutral, independent bodies, and components of the International Red Cross and Red Crescent Movement, these societies raise issues and any concerns about detention conditions directly with the detaining authorities and do not publicly disclose the findings.

National preventive mechanisms established under the OPCAT – Under the Optional Protocol to the Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment or Punishment (see factsheet below), States parties are required to set up or designate complementary national preventive mechanisms within one year of ratification. For NGOs working in these countries, they may wish to become involved in discussions on the establishment or appointment of these NPMs with governments, and once established, to lobby the bodies to visit and inspect administrative detention centres and other places of detention of asylum-seekers and refugees. The NPMs also have a mandate to review existing and draft legislation to ensure its compatibility with international standards, so there may be opportunities for NGOs to feed into this process.

The media – The media often do not have access to detention facilities. Nevertheless, by raising awareness on detention conditions through information obtained from those who do have access, the media can play a role in putting pressure to ensure that the human rights of detainees are respected and kept under scrutiny.

UN CHARTER MECHANISMS

Human Rights Council Universal Periodic Review (UPR)

Legal Basis: The UN Human Rights Council (HRC) established the Universal Periodic Review mechanism pursuant to HRC resolution 5/1 of 18 June 2007.

Composition: The HRC consists of 47 Member States of the United Nations.

Mandate: Pursuant to GA resolution 60/251, the HRC was tasked with 'undertak[ing] a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States.' A 'cooperative approach, based on interactive dialogue,' shall guide the work of the HRC during the review process. As the UPR is in its infancy, it is not entirely clear how the procedure will evolve and develop, and can be subject to speedy changes, so NGOs are advised to pay careful attention to the website of the Office of the High Commissioner for Refugees (www.ohchr.org).

NGO Input: HRC resolution 5/1 envisages an active NGO involvement in the UPR mechanism. The UPR shall 'ensure the participation of all relevant stakeholders, including non-governmental organizations and national human rights institutions ...' NGOs may participate and influence the UPR process at a number of stages:

1. NGOs may input at the national level when the country is in the process of preparing its report.
2. Prior to the review, NGOs may submit a report of a maximum of 5 pages or 10 pages for larger coalitions of NGOs to the Office of the High Commissioner for Human Rights (OHCHR). The OHCHR encourages submissions that conform to the General Guidelines according to HRC decision 6/102, and otherwise available at <http://www.ohchr.org>. The OHCHR is then responsible for preparing a compilation of 'additional, credible and reliable information' from other stakeholders. This compilation shall not exceed 10 pages. Because of the short length of the final compilation, NGOs would be advised to as far as possible prioritise issues of concern in their individual or group submissions, rather than leave it up to the OHCHR to decide on what material to include or to exclude in the final document.
3. During the review itself, NGOs can contribute by attending the Working Group of the 47 Member States in reviewing the performance of the Member State under review, which is an oral question and answer session. NGOs may take the floor at this stage and make statements to the meeting, and they will also be given an opportunity to make general comments before the adoption of the outcome at the plenary.
4. After the review, NGOs may participate in assessment meetings, in order to comment on the review and evaluate it (e.g. by identifying any shortcomings, and preparing the follow-up), and by making general comments before the adoption of the outcome by the plenary. The outcome also includes a list of recommendations to the State under review. Either on the day or subsequently, the State is required to accept or reject the various recommendations it is committed to implementing.
5. NGOs can follow-up on these recommendations upon return to their home countries, and in preparation for subsequent periodic reviews.

Binding/non-binding character of recommendations: The Council's recommendations are of a non-binding character, but they do have political influence and can form an important source of recommendations for future action.

Contact Details

NGO submissions for inclusion in the UPR summary of stakeholders' information should be sent to:

OHCHR Civil Society Unit
Ms. Laura Dolci-Kanaan
NGO Liaison Officer
Tel. +44 22 917 9656
Fax. +44 22 917 9004
Email: civilsocietyunit@ohchr.org or UPRsubmissions@ohchr.org
Web: www.ohchr.org

Human Rights Council Complaints Procedure

Legal Basis: By HRC resolution 5/1 of 18 June 2007, the HRC committed to the establishment of a new complaints procedure to address 'consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.'

Composition: The Working Group on Communications is made up of five independent and highly qualified experts for a three year period (mandate renewable once); the Working Group on Situations comprises five members for a period of one year (mandate renewable once).

Mandate: HRC resolution establishes two working groups – the Working Group on Communications and the Working Group on Situations – to examine communications and to bring to the attention of the Council consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms. The WG on Communications is charged with assessing the admissibility and merits of a communication, including whether the communication alone or in combination with other communications, appears to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms. All admissible communications and recommendations thereon are transmitted to the WG on Situations. The WG on Situations considers these communications as well as responses from States, and presents a report to the Council and makes recommendations to the Council on the course of action to take. The complaints procedure is intended to be 'impartial, objective, efficient, victims-oriented and conducted in a timely manner' (per ECOSOC resolution 1504 (XLVIII) of 27 May 1970 as revised by resolution 2000/3 of 19 June 2000).

Confidentiality of the procedure: The communications procedure is confidential.

Admissibility criteria: There are a number of grounds upon which a communication will be declared inadmissible, including that the communication is manifestly politically motivated; it does not contain a factual description of the alleged violation, including the rights which are alleged to be violated; its language is abusive (this may be waived if it meets the other criteria for admissibility and the abusive language is removed); it is not submitted by a victim of a violation or any person or group of persons, including NGOs, acting in good faith (reliably attested communications shall not be inadmissible because the knowledge of the individual author is second hand, provided they are accompanied by clear evidence); it is exclusively based on reports disseminated in the mass media; it appears to deal with violations that are being dealt with by another UN procedure; domestic remedies have not been exhausted, unless such remedies are ineffective or unreasonably prolonged.

NGO Input: NGOs may submit communications on violations to the WG on Communications.

Contact Details

Human Rights Council and Treaties Division
Complaints Procedure
OHCHR-UNOG
1211 Geneva 10, Switzerland
Fax. +41 22 917 90 11
Email: CP@ohchr.org
Web: www.ohchr.org

UN Working Group on Arbitrary Detention (WGAD)

Legal Basis: Established by the UN Commission on Human Rights in 1991, pursuant to the recommendations made by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The basis for establishing "thematic" procedures is Resolution 1235 (XLII) of 6 June 1967 of the UN Commission on Human Rights. All mandates, mechanisms, functions and responsibilities of the Commission have been now assumed by the Human Rights Council (HRC) by decision 2006/102, pursuant to General Assembly resolution 60/251 (2006). The mandate of the Working Group has most recently been extended for a further three-year period by HRC resolution 6/4.

Composition: Five Independent Experts appointed following consultations by the President of the Human Rights Council. The Working Group on Arbitrary Detention's mandate (WGAD) is extended by the HRC every three years. The WGAD holds three sessions per year (each lasting between five and eight working days).

Mandate: The WGAD has a mandate to investigate individual cases of deprivation of liberty imposed arbitrarily, or otherwise inconsistently with relevant international standards set forth in the Universal Declaration of Human Rights or in other relevant international legal instruments accepted by the States concerned, provided that no final decision has been taken in such cases by domestic courts in conformity with domestic law. The WGAD has adopted criteria to determine whether a deprivation of liberty is arbitrary (see OHCHR Fact Sheet No. 26, available at www.ohchr.org). The WGAD receives information from governments, and intergovernmental and non-governmental organizations, and from individuals concerned, their families and their representatives. This information is forwarded to the government concerned through diplomatic channels with an invitation to communicate with the WGAD within 90 days. The response from the government is forwarded to the source of the communication for any final comments or observations. The WGAD presents a comprehensive report to the HRC at its annual session. It also adopts 'deliberations' on matters relating to its mandate in which it defines the criteria on the basis of which deprivation of liberty may become arbitrary.

In discharging its functions, the WGAD undertakes a variety of activities: 1. it may consider individual complaints (being the only non-treaty based mechanism allowed to do so); 2. it may send urgent appeals to the State concerned, for cases where there are sufficiently reliable allegations that a person is detained arbitrarily and this situation is dangerous for the individual's health or life; 3. it may carry out country missions, and conduct discussions with governmental officials, prison guards, NGOs, detainees, and other relevant parties. Visits are conducted on the basis of invitations by the government concerned.

Access to places of detention during visits: According to the Terms of Reference for Fact-Finding Missions by Special Procedures (UN Doc. E/CN.4/1998/45) applicable to all country missions carried out by HRC Special Procedures mandates, governments must grant unrestricted access to prisons, detention facilities and places of interrogation, contacts with representatives of NGOs, other private institutions and the media, and allow for confidential and unsupervised interviews with detainees and other private persons, and full access to all documentary material relevant to the mandate.

Preventive/reactive character of country visits: The WGAD functions essentially in a reactive manner, carrying out visits following receipt of information of human rights abuses that have already been committed, although the fact of its visits can operate to prevent

future abuses and improve conditions in detention.

Possibility of follow-up visits: Although in theory the WGAD could carry out follow-up visits, due to limited capacities and resources, it has only done subsequent visits in very limited cases.

Confidentiality of the procedure: The WGAD presents annual public reports to the Human Rights Council.

Binding/non-binding character of recommendations: The WGAD's findings and recommendations are of a non-binding character, but they do have political influence and can form an important source of recommendations for future action.

NGO Input: NGOs may submit individual cases to the WGAD on behalf of individuals deprived of their liberty. NGOs may also participate in a country visit, either by meeting directly with the WGAD, by recommending and assisting with the organizing of the WGAD to meet with others NGOs or individuals, or by transmitting information in advance of or during the mission on the situation at hand. Apart from this, NGOs may submit reliable and regular information about the human right situation in a particular country at any time to the Working Group on Arbitrary Detention, which may encourage him/her to prioritise that country and to put it on the list of potential places to visit.

Contact Details

For an individual case or cases, the communication should be sent to:

Working Group on Arbitrary Detention
c/o Office of the UN High Commissioner for Human Rights
United Nations Office at Geneva
CH-1211, Geneva 10
Switzerland

Urgent communications should be faxed to: +41 22 917 90 06

Web: www.ohchr.org

UN Special Rapporteurs

There are a large number of Special Rapporteurs of the Human Rights Council. Currently there are 29 thematic and 9 country mandates. While some of these deal directly with detention, or with asylum-seekers, refugees or other migrants, many others are also relevant to the detention of these individuals having cross-cutting mandates. Those Special Rapporteurs that are particularly relevant in the detention context, and/or in relation to asylum-seekers, refugees and other migrants include:

- **Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;**
- **Special Rapporteur on the human rights of migrants;**
- **Special Rapporteur on violence against women, its causes and consequences;**
- **Special Rapporteur on trafficking in persons, especially women and children;**
- **Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance;**
- **Special Rapporteur on the promotion and protection of human rights while countering terrorism;**
- **Special Rapporteur on the Right to Food;**
- **Special Rapporteur on the Right to Education;**
- **Special Rapporteur on the Right to the highest attainable standard of physical and mental health.**

Depending on the issue at hand, NGOs are advised to consider the most relevant and appropriate special procedure. Their mandates are very similar, but there are slight

variations. Please verify specific details at www.ohchr.org.

Legal Basis: All mandates, mechanisms, functions and responsibilities of the Commission have been now assumed by the Human Rights Council (HRC) by decision 2006/102, pursuant to General Assembly resolution 60/251 (2006).

Mandates:

1. Country Visits

Generally, the mandates of the thematic Special Rapporteurs cover all countries, and include most, if not all, of the following activities: 1. receiving information on human rights violations from all relevant sources, including NGOs; 2. transmitting such information to States for their response; 3. carrying out country visits to investigate human rights abuses, subject to invitation; 4. issuing mission and other reports on their findings and recommendations to the State, to the Human Rights Council and to the General Assembly; 5. recommending measures at the international, regional and national levels, to eliminate violations of human rights; 6. sending urgent appeals to governments to bring to their attention alleged violations of the human rights of particular individuals.

Consent of the State concerned to carry out country visits: The normal procedure is for the Special Rapporteur to send a letter to the government requesting to visit the country, and, if the government agrees, an invitation to visit is extended. Some countries have issued 'standing invitations' which means that they are, in principle, prepared to receive a visit from any of the Special Rapporteurs or other Special Procedures (currently 57 States have done so).

Access to places of detention during visits: According to the Terms of Reference for Fact-Finding Missions by Special Procedures (UN Doc. E/CN.4/1998/45) applicable to all country missions carried out by HRC Special Procedures mandates, governments must grant unrestricted access to prisons, detention facilities and places of interrogation, contacts with representatives of NGOs, other private institutions and the media, and allow for confidential and unsupervised interviews with detainees and other private persons, and full access to all documentary material relevant to the mandate.

Non-Confidentiality of the procedure: The Special Rapporteur presents mission reports as well as annual public reports to the Human Rights Council on its work, although the names of individuals may be kept confidential if so requested.

Possibility of follow-up visits: Although in theory the Special Rapporteur can consider follow up visits, due to limited capacity and resources, they have only usually done so in exceptional situations.

Binding/non-binding character of recommendations: Recommendations of the Special Rapporteurs are of a non-binding character, but they do have political influence and can form an important source of recommendations for future action.

2. Communications

Mandate: Some Special Rapporteurs intervene directly with governments in relation to specific allegations of human rights violations and urgent cases. The decision to intervene rests with the special procedure mandate holder. For NGOs wishing to submit information regarding a particular incident or individual, the following minimal information is usually required:

- Identification of the alleged victim(s);
- Identification of the alleged perpetrators of the violation;
- Identification of the person(s) or organization(s) submitting the communication (this information will be kept confidential);
- Date and place of the incident;
- A detailed description of the circumstances of the incident.

Subject to their discretion, a Special Rapporteur may send a letter to the concerned

government requesting information and comments on the alleged human rights violation and, where necessary, asking that preventive or investigatory action be taken.

3. NGO Input

NGOs may submit individual cases to the Special Rapporteurs on behalf of individuals deprived of their liberty. NGOs may also participate in a country visit, either by meeting directly with the Special Rapporteur, by recommending and assisting with the organising of the Special Rapporteur to meet with others NGOs or individuals, or by transmitting information in advance of or during their mission on the situation at hand. Apart from this, NGOs may submit reliable and regular information about the human right situation in a particular country at any time to a Special Rapporteur, which may encourage him/her to prioritise that country and to put it on the list of potential places to visit.

Make sure you check the particular mandate of each Special Rapporteur www.ohchr.org.

Contact Details

Information and requests for urgent interventions in individual cases can be sent to:

Special Rapporteur (indicate which Special Rapporteur)
OHCHR-UNOG
8-14 Avenue de la Paix
1211 Geneva 10
Switzerland

Fax. +41 22 917 90 06
Email. Urgent-action@ohchr.org
Web: www.ohchr.org

UN Representative of the Secretary-General on the Human Rights of Internally Displaced Persons

Legal Basis: Established pursuant to Commission on Human Rights resolution 2005/2 for three years, and later extended by Human Rights Council resolution 7/21 in 2008 for a further three years.

Mandate: The Representative's work focuses on four main areas: 1. developing a normative framework with regard to internally displaced persons; 2. developing an effective institutional framework at the international, regional and national levels; 3. undertaking country missions, in order to assess the extent to which the protection, assistance and development needs of IDPs are met in specific situations, and to engage in solution-oriented dialogue both with governments, international organizations and NGOs; 4. conducting research on themes of particular interest and concern; 5. sending reports, with regard to the activities undertaken, to the Human Rights Council and the General Assembly.

Consent of the State concerned to carry out country visits: Prior agreement by the State concerned is necessary to carry out country visits, usually by request from the UN Representative of the S-G to the country in question and then awaiting an invitation from that country.

Access to places of detention during visits: Like the WGAD and the Special Rapporteurs, according to the Terms of Reference for Fact-Finding Missions by Special Procedures (UN Doc. E/CN.4/1998/45), governments must grant unrestricted access to prisons, detention facilities and places of interrogation, contacts with representatives of non-governmental organisations, other private institutions and the media, and allow for confidential and unsupervised interviews with detainees and other private persons, and full access to all documentary material relevant to the mandate

Preventive/reactive character of country visits: The UN Representative's visits have a reactive character, since visits are generally carried out after human rights violations have taken place, but they can also have a preventive character to the extent that they can prevent future violations from occurring, and improve conditions on the ground.

Possibility of follow-up visits: Although in theory the UN Representative can conduct follow up visits, due to limited capacity and resources, s/he has only been able to do so in very limited circumstances.

Confidentiality of the procedure: The UN Representative presents annual public reports to the Human Rights Council.

Binding/non-binding character of recommendations: Recommendations of the UN Representative are of a non-binding character, but they do have political influence and can form an important source of recommendations for future action.

NGO Input: NGOs may submit individual cases to the UN Representative on behalf of IDPs deprived of their liberty. NGOs may also participate in a country visit, either by meeting directly with the UN Representative, by recommending and assisting with the organising of the UN Representative to meet with others NGOs or individuals, or by transmitting information in advance of or during their mission on the situation at hand. Apart from this, NGOs may submit reliable and regular information about the human right situation of internally displaced persons in a particular country at any time to the UN Representative, which may encourage him/her to prioritise that country and to put it on the list of potential places to visit.

Contact Details

Information and requests for urgent interventions in individual cases can be sent to:

UN Representative to the Secretary-General on the Human Rights of Internally Displaced
Persons

OHCHR-UNOG

8-14 Avenue de la Paix

1211 Geneva 10

Switzerland

Fax. +41 22 917 90 06

Web: www.ohchr.org

UN HUMAN RIGHTS TREATY BODIES

UN Human Rights Treaty Bodies – State Reporting

The UN Human Rights Treaty Bodies include: The UN human rights treaty bodies are the committees established to monitor implementation of human rights obligations under the respective treaties. These are:

- the Human Rights Committee (HRC), which monitors the International Covenant on Civil and Political Rights 1966 (ICCPR);
- the Committee on Economic, Social and Cultural Rights (CESCR), which monitors the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR);
- the Committee on the Elimination of Racial Discrimination (CERD), which monitors the International Convention on the Elimination of All Forms of Racial Discrimination 1965 (ICERD);
- the Committee on the Elimination of Discrimination against Women (the Women's Committee), which monitors the Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW);
- the Committee against Torture (CAT), which monitors the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (UNCAT)); the Committee on the Rights of the Child (the Children's Committee) (Convention on the Rights of the Child 1989 (CRC));
- the Committee on the Rights of Migrant Workers (Migrant Workers' Committee), which monitors the International Convention the Rights of All Migrant Workers and Members of their Families 1990 (IMWC)); and
- the Committee on the Rights of Persons with Disabilities (CRPD), which monitors Convention on the Rights of Persons with Disabilities 2006 (ICRPD) [as at the date of publication, the CPRD had not yet been established].

Legal Basis: The UN human rights treaty bodies are established pursuant to the treaty they monitor or, in the case of CESCR, by ECOSOC resolution.²

Mandate: All States parties to the relevant treaty are obliged to submit regular reports to the respective committee, regarding the implementation of the rights enshrined in the relevant Conventions. Initial reports are due between one and two years after ratification or accession, with subsequent periodic reports due every two, four or five years, depending on the treaty in question. Committees typically issue Lists of Issues to the State party. Lists of Issues are a series of questions directed at the State party, which may supplement their report if there has been a period between submission and review, or the List may form the basis for the preparation of State party reports. The reporting process is intended to be a constructive dialogue between the treaty body and the State party on the implementation of its treaty obligations, setting out any difficulties as well as positive developments. The Committees examine each report in a face-to-face meeting with delegations from the State party, after which they issue "concluding observations".

Composition: The committees are made up of between 10 and 23 members, who are independent experts of 'high moral character and recognized competence in the field of human rights' and consideration is to be given to those with legal experience.

Binding/non-binding character of recommendations: While Concluding observations are not binding, they do constitute the considered views of the monitoring bodies and, as such, have a special significance. It is never acceptable for a State to simply disregard them.

NGO Input: NGOs may input into the process of periodic reporting in a number of ways: 1. By submitting 'shadow' or 'alternative' or 'NGO' reports on the performance of the State party to the treaty body in question; 2. By feeding questions and issues to the treaty

² HRC (Art. 8, ICCPR); Committee on Economic, Social and Cultural Rights (ECOSOC res. 1985/17, 28 May 1985); Committee on Elimination of Racial Discrimination (Part III, ICERD); Women's Committee (Part V, CEDAW); Committee against Torture (Part II, UNCAT); Children's Committee (Part II, CRC); Migrant Workers' Committee (Part VII, MWC); CRPD (Art. 34, ICRPD).

bodies to be included in the List of Issues submitted to the State party in advance of the review; 3. By holding briefings for the treaty bodies before the review session; 4. By publicising and distributing the findings of the committees within the national media and other outlets, and to use these reports in national case law or submissions to States parties within national consultations, etc. NGOs may collaborate and submit joint reports or alternatively, separate reports to the treaty bodies. Best practices suggest that reports not be too lengthy and that a few issues of concern to the NGO be prioritised, rather than raising all issues. The reports may be organised by theme or by treaty right.

Contact Details

Shadow or alternative reports may be submitted:

Treaty Bodies [or name particular treaty body]
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
1211 Geneva 10
Switzerland

Fax. +41 22 917 9022

Web: www.ohchr.org

UN Human Rights Treaty Bodies (HRC; CERD; CAT; CEDAW) – Individual Communications Procedures

Legal Basis: Some of the human rights treaty bodies have a mandate to receive and consider individual communications (or individual complaints):

- the Human Rights Committee – First Optional Protocol to the International Covenant on Civil and Political Rights 1966;
- the Committee on the Elimination of All Forms of Racial Discrimination – Article 14 of the International Convention on the Elimination of All Forms of Discrimination of Racial Discrimination 1965;
- the Committee against Torture – Article 22 of the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment 1984;
- the Committee on the Elimination of All Forms of Discrimination against Women – the 1999 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women 1979.³

Mandates: In addition to examining States' reports [see above factsheet], four of the human rights treaty bodies may consider complaints or communications lodged by individuals or groups of individuals. The CERD and the Women's Committee also accept communications from NGOs. In order to bring a complaint against a State party under one of the four treaties, two preliminary conditions must be satisfied: 1. the State must be a party to the treaty in question; and 2. the State party must have recognized the competence of the committee established under the relevant treaty to consider complaints from individuals (usually by means of issuing a declaration to this effect). A communication will be registered by the Secretariat of the Office of the High Commissioner for Human Rights (OHCHR) [address details at the end of this Toolkit] if it provides minimal information, such as the complainant's name, nationality, and date of birth; the state party against which the complaint is made; and a statement, in chronological order, of the facts on which the claim is based.

Admissibility of Complaints: Before the relevant committee will examine the merits or substance of a communication, the communication must satisfy a number of admissibility criteria. These are as follows: 1. A complaint must be submitted by a victim of an alleged violation or by other persons acting on his/her behalf (in the latter case, sufficient

³ Please note that at the date of publication, the Human Rights Council had just unanimously agreed the draft text of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 1966 to hear individual communications (HRC, 18 June 2008). It should proceed before the General Assembly later in 2008 for final approval.

authorization must be obtained, usually a letter. NGOs may act on behalf of victims). 2. The alleged violation must relate to a right protected by the treaty in question. 3. The communication must relate to a violation that occurred after entry into force of the complaints mechanism for the State party in question. In some circumstances, the committees have allowed complaints relating to violations that began prior to entry into force of the treaty in respect of the State party concerned, but which continued after the entry into force. 4. Domestic remedies must have been exhausted, but this requirement will be waived where the committee is satisfied that there are no effective remedies available. 5. The communication can not have been heard, or be in the process of being heard, by another international dispute or settlement procedure. This does not always prevent the submission of a complaint to several bodies, as some of the treaty bodies allow any unheard complaints to be withdrawn from other jurisdictions in order to satisfy this criterion. 6. The complaint must not be anonymous, an abuse of the right of submission, or incompatible with the provisions of the treaty. Although the submission must not be anonymous, it is possible to request that the name of the author of the communication not to be made public.

Binding/non-binding character of recommendations: Committees' final views have a non-binding character, but they have had effect in some jurisdictions in leading to remedies for victims and/or changes in the law. Best practice is that they can lead to replication in domestic laws or followed in domestic jurisprudence. It is never acceptable for a State to simply disregard them.

NGO Input: NGOs may use the individual communications procedures in a number of strategic ways, including bringing communications on behalf of individuals in detention, or to determine 'test' cases on a particular point of law relating to an individual in detention (or an individual who has been recently released). As with any litigation strategy, decisions will need to be made regarding the appropriate forum after domestic remedies have been exhausted. Other judicial decision-making bodies are referred to below.

Contact Details:

Individual communications may be submitted to:

Petitions Team
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
1211 Geneva 10
Switzerland

Fax: +41 22 917 9022
Email: tb-petitions@ohchr.org
Web: www.ohchr.org

UN Human Rights Treaty Bodies (CAT; CEDAW) – Fact-Finding or Inquiry Procedures⁴

Legal Basis: Art. 20 of the UN Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment 1984 (UNCAT); Arts. 8 and 9 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1999, subject to an opt-out clause at ratification (Art. 10).

Mandate: The Committee against Torture (CAT) and the Committee on the Elimination of Discrimination against Women may, on their own initiative, carry out inquiries if they have received reliable information concerning well-founded indications of serious or systematic human rights violations. In the case of the CAT, it may carry out an inquiry if it receives

⁴ Please note that at the date of publication, the Human Rights Council had unanimously agreed the draft text of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 1966 to hear individual communications (HRC, 18 June 2008), which includes an opt-in inquiry procedure equivalent to those outlined above. The draft OP should proceed before the General Assembly later in 2008 for final approval.

reliable information that torture is being systematically practised in the territory of a State party. In the case of the Women's Committee, it may initiate an inquiry when it receives reliable information about grave or systematic violations of rights of the CEDAW. Upon receipt of such information, the CAT and the Women's Committee may ask the State party to cooperate in an inquiry and to respond to any questions relating to the allegation(s). In addition, it may designate one or more of its members to undertake a confidential inquiry, which may include a country mission, and to report to the Committee urgently afterwards. These findings shall be also transmitted by the Committee to the State Party, together with any comments or suggestions which may seem appropriate. Follow-up may include the sending of further letters to the State party; in the case of the Women's Committee, the CEDAW sets a 6-month deadline for States parties to respond.

Consent of the State concerned to carry out country visits: The procedure in both cases is confidential throughout and requires the consent of the State party to conduct the inquiry and any country missions proposed.

Preventive/reactive character of country visits: The competence of the Committee may be triggered only after violations of human rights have occurred, and as such has an essentially reactive character, although the fact of a visit can operate to prevent future abuses and improve conditions in detention.

Possibility of follow-up visits: Follow-up visits are not excluded; however, for each visit to take place, the abuses in question must meet the threshold of the above mentioned criteria.

Confidentiality of the procedure: The procedure has a confidential character. However, with the consent of the State party, the Committee may decide to publish a summary account of the proceedings in its annual report.

Binding/non-binding character of recommendations: Recommendations of the Committee against Torture and the Women's Committee are of a non-binding character for States, although they do constitute the considered views of the monitoring bodies and, as such, have a special significance. It is never acceptable for a State to simply disregard them.

NGO Input: NGOs may submit reliable information concerning serious or systematic human rights violations in order to invoke the mandate of the CAT and the Women's Committee to carry out a fact-finding mission.

Contact Details

Information can be supplied to the OHCHR to:

Treaty Bodies [or insert specific treaty body]
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
1211 Geneva 10
Switzerland

Fax. +41 22 917 9022

Web: www.ohchr.org

UN Sub-Committee on the Prevention of Torture – Visits to Places of Detention

Legal Basis: The Sub-Committee on the Prevention of Torture (SPT) is established pursuant to the Optional Protocol to the Convention against Torture and other Cruel or Degrading Treatment or Punishment 2002 (OPCAT).

Composition: Ten experts (increasing to 25 members after the fiftieth ratification) of high moral standing and recognized competence in the field of human rights and in the administration of justice, in particular criminal law, prison or police administration, who serve in their personal capacity, elected by the State Parties for a term of four years. Other

experts may be invited to join the members of the SPT when undertaking missions.

Mandate: Pursuant to its mandate, the Sub-Committee shall: 1. Visit places of detention or persons deprived of their liberty, and make recommendations to State parties in this respect; 2. advise and assist State parties in the establishment or designation of national preventive mechanisms which must be set up or designated in accordance with Art. 3 of the OPCAT within one year of ratification; 3. collaborate with the national preventive mechanisms, by collaborating with them and by offering them training and technical assistance; 4. collaborate with relevant UN, international and regional organs and mechanisms.

Consent of the State concerned to carry out country visits: Visits can be conducted in the territory of States parties to the OPCAT without prior consent. The State party may object to a visit only on a limited number of grounds (that is, for urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited), but this allows the State party only to delay but not prevent a visit.

Access to places of detention during visits: Pursuant to Art. 14 of the OPCAT, the SPT shall have unrestricted access to all information related to persons deprived of their liberty, and full and free access to all the detention places and their facilities. If necessary, the SPT shall have the opportunity of having private interviews with detained individuals and others, without witnesses, either personally or with the aid of a translator. Any form of retaliation or sanction against persons communicating with SPT is prohibited under Art. 15.

Preventive/reactive character of country visits: Since the Sub-Committee is a "preventative" mechanism and is authorized, together with national preventive mechanisms, to undertake regular and unannounced visits to places of detention, without the need of a previous authorization by the States concerned and regardless of individual complaints, its visits should pre-empt violations.

Possibility of follow-up visits: Pursuant to Art. 13(4), if the SPT considers it appropriate, it may carry out a follow-up to a regular visit.

Confidentiality of the procedure: The procedure has a confidential character. However, whenever requested to do so by the State party, the SPT may publish its report, together with any comments of the State party concerned. If the State party refuses to co-operate, the UN Committee against Torture may, at the request of the SPT, decide, by a majority of its members, either to make a public statement on the matter or to publish the report of the Sub-Committee. In comparison, the reports of the national preventive mechanisms are to be published by the State party annually.

Binding/non binding character of recommendations: Recommendations of the SPT are of a non-binding character for States parties, although as they constitute the considered views of the monitoring bodies, they have a special significance. It is never acceptable for a State to simply disregard them.

NGO Input

There may be several ways in which NGOs can contribute to the work of the SPT and the national preventive mechanisms: 1. By supplying information to the SPT in relation to a particular country due for a visit; 2. to meet with the SPT and the NPMs before and during their visits; 3. to make recommendations to the SPT and the NPMs on places and individuals to be visited; 4. to offer advice to NPMs in their role of revising draft and current legislation concerning detention.

Contact Details

Information can be supplied to the OHCHR to:

Sub-Committee on the Prevention of Torture
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
1211 Geneva 10
Switzerland

Fax. +41 22 917 9022

Web: www.ohchr.org

THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR)

Legal Basis: UNHCR activities are conducted on the basis of its 1950 Statute adopted by General Assembly Resolution 319/1949. Art. 35 of the 1951 UN Convention relating to the Status of Refugees and Art. II of its 1967 Protocol assign to UNHCR a supervisory responsibility on the application of the provisions of the Convention and its Protocol. In 2000, the Sub-Commission on Human Rights res. 2000/21, *Detention of asylum-seekers*, 27th meeting, 18 Aug. 2000, recommended to States in which asylum-seekers are detained that they provide information to UNHCR, pursuant to Article 35 of the 1951 Refugee Convention, on how detention policies and practices conform to relevant international standards.

UNHCR Country Presence: The United Nations High Commissioner for Refugees has over 5000 staff with different types of expertise located in 111 countries worldwide. Normally, Protection Officers would deal with detention issues.

Mandate: UNHCR is mandated by the United Nations to lead and coordinate international action for the worldwide protection of refugees and the resolution of refugee problems. It also has a mandate over stateless persons, and lead responsibility for protection issues of persons internally displaced by conflict.

Access to places of detention during visits: A number of Conclusions of the Executive Committee have called upon UNHCR and other concerned parties to take measures to protect refugees from arbitrary detention and recommended that refugees and asylum-seekers who are detained are provided with the opportunity to contact the Office of the UNHCR (EXCOM Nos. 44 (XXXVI) 1985; 46 (XXXVIII) 1987; 50 (XXXIX) 1988; 65 (XLII) 1991; 85 (XLIX) 1998; 106 (LVII) and 107 (LVIII). See, also, UNHCR, *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers*, 1999; UNHCR, *Agenda for Protection*, 2001 as updated) and EXCOM Standing Committee 1999 Conference Paper on Detention of Asylum Seekers and Refugees. UNHCR should be given access to asylum seekers and refugees in detention, but this is at times denied.

Preventive/reactive character of country visits: UNHCR's activities have both a preventive and reactive character.

Possibility of follow-up visits: Visits to detention facilities are regularly conducted.

Confidentiality of the procedure: UNHCR worldwide activities are covered in various publications, such as The Global Appeal and The Global Report. Information related to individuals in detention is treated confidentially.

NGO Input: NGOs can report situations of detained asylum-seekers, refugees or other persons of concern to the UNHCR directly to the country office of the UNHCR. NGOs often work collaboratively with the UNHCR to lobby governments to bring about improved conditions or the release of particular persons from detention.

Contact Details

UNHCR country offices should be contacted with regard to individual cases in detention. UNHCR Headquarters can be contacted at the following address:

United Nations High Commissioner for Refugees
94 Rue Montbrillant
Case Postale 2500
CH-1211 Geneva (2 Dépôt)
Switzerland

Tel. +41 22 739 8111
Fax. + 41 22 731 95 46
Web: www.unhcr.org

INTERNATIONAL COMMITTEE OF THE RED CROSS

Legal Basis: The ICRC developed a longstanding practice and tradition of activities in favour of and visits to persons deprived of liberty in a variety of situations. In case of international armed conflict, the ICRC's activities are carried out on the basis of the Geneva Conventions of 1949; in cases of non international armed conflict the ICRC's activities are carried out on the basis of the common Article 3 of the Geneva Conventions as well as on the basis of the humanitarian right of initiative laid down in the Statutes of International Red Cross and Red Crescent Movement [see later in this document under Domestic Mechanisms for Monitoring Detention Conditions] and accepted by the States parties to the Geneva Conventions; in case of internal disturbances and other internal situations, the ICRC's activities are carried out on the basis of the humanitarian right of initiative laid down in the Statutes of International Red Cross and Red Crescent Movement.

Mandate:

International armed conflict: According to Art. 126 of the Third Geneva Convention, delegates of the ICRC 'shall have permission to go to all places where prisoners of war may be, particularly to places of internment, imprisonment and labour, and shall have access to all premises occupied by prisoners of war; they shall also be allowed to go to the places of departure, passage and arrival of prisoners who are being transferred. They shall be able to interview the prisoners, and in particular the prisoners' representatives, without witnesses, either personally or through an interpreter.'

With regard to civilians who are interned or otherwise deprived of their liberty, Art. 143 of the Fourth Geneva Convention establishes that delegates of the ICRC shall be allowed to visit all places of internment and detention and to all other places where persons protected by that Convention are located. The modalities of visits are the same as under the Third Geneva Convention.

Non international armed conflict: According to Common Art. 3 to the Geneva Conventions the ICRC may offer its services to the Parties to the conflict 'as an impartial humanitarian body.'

In other situations: According to Art 5.2.d and 5.3 of the Statutes of International Red Cross and Red Crescent Movement, 'The role of the International Committee, in accordance with its Statutes, is in particular: to endeavour at all times – as a neutral institution whose humanitarian work is carried out particularly in time of international and other armed conflicts or internal strife – to ensure the protection of and assistance to military and civilian victims of such events and of their direct results.' The ICRC may take any humanitarian initiative which comes within its role as a specifically neutral and independent institution and intermediary, and may consider any question requiring examination by such an institution.

Consent of the State concerned to carry out country visits: No consent is required for activities carried out on the basis of the Geneva Conventions. For other situations, the activities of the ICRC are conducted on the basis of agreements with States and other authorities concerned.

Access to places of detention during visits: As a matter of standard policy, ICRC delegates retain the full liberty of choosing the places they wish to visit, the visits' frequency, and their duration.

Preventive/reactive character of country visits: The ICRC activities have essentially a preventive character, as they are meant to prevent the occurrence of violations of international humanitarian law. They also aim to put an end to human rights abuses and may be organised to respond to allegations of abuse.

Possibility of follow-up visits: ICRC follow-up visits are integral part of ICRC standard visiting procedure.

Confidentiality of the procedure: Reports are confidential.

Contact Details

The ICRC can be contacted at the following address:

International Committee of the Red Cross
19 Avenue de la Paix
CH 1202 Geneva

Tel.: +44 (22) 734 60 01
Fax: + 44 (22) 733 20 57
Web: www.icrc.org

INTER-AMERICAN SYSTEM

Inter-American Commission on Human Rights

Legal Basis: The Commission's mandate is found in the Charter of the Organization of American States 1948 and in the American Convention on Human Rights 1969.

Composition: The Inter-American Commission is composed of seven members, persons of high moral character and recognized competence in the field of human rights, who are elected by the OAS General Assembly for four -year terms.

Mandate: The Inter-American Commission is empowered to: 1. receive and examine petitions, presented by any person or group of persons, or by any non-governmental organization, or communications, filed by a State party against under Article 45 of the American Convention of Human Rights, of human rights abuses committed by a State party to a number of Inter-American instruments, including the Convention, the American Declaration on the Rights and Duties of Man, the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on Enforced Disappearances, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (see below for more information); 2. observe and monitor the human rights situation in the Americas and promote awareness and stimulate public consciousness in this sense; 3. request States to adopt "precautionary measures" in serious and urgent cases, to prevent irreparable harm to persons; 4. submit cases to the Inter-American Court, as provided for in the Inter-American Convention on Human Rights and other pertinent instruments, and appear before the Court in the litigation of cases (see below on the Court); 5. carry out country visits to State parties to the Inter-American Convention on Human Rights or the American Declaration on the Rights and Duties of Man, in order to investigate a specific case (in serious and urgent cases, only the presentation of a petition or communication that fulfils all the necessary requirements of admissibility is necessary to conduct an investigation); 6 issue public reports concerning individual petitions, thematic or country reports on the situation of human rights in the Americas. On-site observations are conducted by Special Commissions established for that purpose, whose members are designated by the Commission.

Consent of the State concerned to carry out country visits: Prior agreement by the State concerned is necessary to carry out country visits.

Access to places of detention during visits: In accordance with Art. 55 of the Commission's Rules of Procedure, the Special Commissions' members, during on-site visits, must be able to travel freely throughout the territory of the country, and have access to the jails and all the other detention and interrogation sites, and be able to interview detainees in private.

Preventive/reactive character of country visits: The Commission's on-site visits have a reactive character, since visits are generally carried out after human rights violations have taken place.

Possibility of follow-up visits: The Commission should consider follow up visits, in order to monitor whether States are implementing recommendations. Unlike other mechanisms in which follow-up visits are rare, a number of follow-up visits have been undertaken.

Confidentiality of the procedure: The Commission prepares an annual report on its activities, which is presented to the General Assembly of the OAS, and other public reports, of a general or specific character.

Binding/non-binding character of recommendations: Recommendations of the Inter-American Commission are of a non-binding character, but they do have political influence and can form an important source of recommendations for future action.

Admissibility Criteria – Individual Petitions: Any person or group of persons, or any non-governmental entity legally recognized in one or more Member States of the OAS, may lodge petitions with the Commission in order to complain of violations of human rights under a range of instruments. A state party may also file communications under Article 45

of the American Convention on Human Rights alleging violations by another State party. Petitions are admissible if domestic remedies have been exhausted (this rule does not apply where the domestic legislation of the State in question does not afford due process of law for the protection of the right/s that have allegedly been violated). The petition must be lodged within a period of six months from the date on which the party alleging violations of his/her rights was notified of the final judgement. The subject of the petition or the communication must not be pending before another international procedure for settlement.

Contact Details

Inter-American Commission on Human Rights
1889 F St, NW, Washington, DC USA 20006

Tel.: (202) 458- 6002
Fax: (202) 458- 3992
E-mail: cidhoea@oas.org
Website: www.cidh.org/

There is an online petition form available to submit directly and securely a petition to the Commission. The form can be found in English, Spanish, French and Portuguese at: https://www.cidh.oas.org/cidh_apps/instructions.asp?qc_language=E

The Rapporteur can be contacted for urgent cases. Urgent appeals and reports of individuals deprived of liberty may brought to the Rapporteur's attention via the following email address: mpulido@oas.org

Inter-American Court of Human Rights

Legal Basis: The Court's mandate is found in the American Convention on Human Rights 1969.

Composition: Pursuant to Art. 52 of the American Convention, the Court consists of seven judges, nationals of the member states of the OAS, elected in an individual capacity from among jurists of the highest moral authority and of recognized competence in the field of human rights. The judges of the Court are elected by secret ballot by an absolute majority vote of the States Parties to the Convention, in the General Assembly of the OAS, from a panel of candidates proposed by those states. No two judges may be nationals of the same State.

Mandate: The Court has both advisory and contentious jurisdiction. It conducts the following activities: 1. receives and considers cases concerning alleged violations of human rights, including the right to personal liberty and to award compensation; 2. to adopt provisional measures in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons; 3. issue advisory opinions regarding the interpretation of the American Convention or other regional instrument concerning the protection of human rights in the Americas. There are only two ways in which individual cases can be brought before the Inter-American Court: 1. by referral from the Inter-American Commission on Human Rights or 2. by a State party. Individuals have no right of direct access to the Court. Victims or their legal representatives (including NGOs) are permitted to participate in the proceedings by submitting a written brief containing pleadings, motions and evidence. The Court is also open to receiving amici curiae, particularly in the context of advisory proceedings.

If within three months from the communication of the preliminary report to the State in question the matter has not been solved or, for those States that have accepted the jurisdiction of the Inter-American Court, has not been referred by the Commission on by the State to the Court for a decision, the Commission, by an absolute majority of votes, may issue a final report that contains its opinion and final conclusions and recommendations. A case must be brought before the Court within three months from the date in which the Commission's initial report was transmitted to the State party concerned. The Court has jurisdiction on all cases concerning the interpretation and application of the

provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction. If the Court determines that a violation of the rights set forth in the Convention has occurred, it will rule that the consequences of the situation be remedied and that fair compensation be paid to the injured party.

Binding/non-binding character of judgements: All final judgments of the Court are legally binding on the respondent States concerned.

Contact Details

Inter-American Court of Human Rights
P.O. Box 6906-1000, San José, Costa Rica

Tel.: (506) 2234 0581
Fax.: (506) 2234 0584
Email: corteidh@corteidh.or.cr
Web: www.corteidh.or.cr

The following link contains a compilation of the most relevant cases dealing with detention (in Spanish): <http://www.cidh.org/PRIVADAS/doctrina.htm>

Inter-American Special Rapporteur on the Rights of Persons Deprived of their Freedom

Legal Basis: The position was established by the Inter-American Commission on Human Rights during its 114th ordinary session, held in February 2004.

Mandate: The Special Rapporteur is empowered to 1. investigate prison conditions in States parties to the Inter-American Convention on Human Rights or the American Declaration on the Rights and Duties of Man; 2. issue urgent appeals and press releases in respect of serious cases of violations of the rights to personal liberty, including in relation to detainees; 3. conduct on-site visits to prison and detention facilities, and to interview detainees, detainees' families, NGOs, and governmental officials, including unannounced visits; 4. prepare reports and studies on the situation of detainees in the Americas for consideration of the Inter-American Commission; 5. issue recommendations to States parties on practices relating to detention and follow-up on these; 6. coordinate promotional activities with NGOs. As a result of these activities, recommendations are sent to the States concerned, and reports are prepared with regard to a particular place of detention, or a specific country or region.

Consent of the State concerned to carry out country visits: Prior agreement by the State concerned is necessary to carry out country visits.

Access to places of detention during visits: In accordance with its mandate, in order to discharge its functions effectively, the Special Rapporteur should be allowed to visit detention facilities "also without previous notice to prison authorities".

Preventive/reactive character of country visits: The Special Rapporteur's visits have a reactive character, since visits are generally carried out after human rights violations have taken place.

Possibility of follow-up visits: The Special Rapporteur should consider follow-up visits, in order to monitor whether States are implementing recommendations..

Confidentiality of the procedure: The Special Rapporteur presents public reports to the Inter-American Commission.

Binding/non-binding character of recommendations: Recommendations of the Special Rapporteur are of a non-binding character, but they do have political influence and can form an important source of recommendations for future action.

Contact Details

Special Rapporteur on the Rights of Persons Deprived of their Freedom
Inter-American Commission on Human Rights
1889 F St, NW, Washington, DC USA 20006

Tel.: (202) 458- 6002
Fax: (202) 458- 3992
Email: cidhoea@oas.org
Website: www.cidh.org/

Appeals and reports of individuals deprived of liberty may brought to the Rapporteur's attention via the following email address: mpulido@oas.org

Inter-American Special Rapporteur on the Rights of Migrant Workers and Their Families

Legal Basis: Established in 1997, per resolutions of the OAS General Assembly AG/RES/1404 XXVI-0/96 and AG/RES/1480/XXVII-0/97.

Mandate: The Special Rapporteur's duties include: 1. generating awareness with respect to the human rights of migrant workers and their families in States parties to the American Convention on Human Rights or the American Declaration on the Rights and Duties of Man, and sending them recommendations; 2. preparing reports and special studies on the situation of migrant workers; 3. acting promptly on communications of alleged abuse of the human rights of migrant workers and their families; 4. undertaking country visits to monitor *in loco* the conditions of migrant workers and their families.

Consent of the State concerned to carry out country visits: Prior agreement by the State concerned is necessary to carry out country visits.

Access to places of detention during visits: In accordance with its mandate, in order to discharge its functions effectively, the Special Rapporteur should be able to have unlimited access to the places he wants to visit and to meet any person s/he would like to interview.

Preventive/reactive character of country visits: The Special Rapporteur's visits have a reactive character, since visits are generally carried out after human rights violations have taken place.

Possibility of follow-up visits: The Special Rapporteur should consider follow-up visits, in order to monitor whether States are implementing recommendations.

Confidentiality of the procedure: The Special Rapporteur presents public reports to the Inter-American Commission.

Binding/non binding character of recommendations: Recommendations of the Special Rapporteur are of a non-binding character, but they do have political influence and can form an important source of recommendations for future action.

Contact Details

Special Rapporteur on the Rights of Migrant Workers and Their Families
Inter-American Commission on Human Rights
1889 F St, NW, Washington, DC USA 20006

Tel.: (202) 458- 6002
Fax: (202) 458- 3992
E-mail: cidhoea@oas.org
Web: www.cidh.org/

Appeals and reports of individuals deprived of liberty may be brought to the Rapporteur's attention via the following email address: mpulido@oas.org

AFRICAN SYSTEM

African Commission on Human and Peoples' Rights

Legal Basis: The Commission was established by the African Charter on Human and People's Rights (ACHPR) 1981.

Composition: According to the Charter, the Commission is to consist of 11 members, with the highest reputations, and well-known for their competence in matters of human and peoples' rights. The members of the Commission serve in their personal capacity. They are elected by secret ballot by the Assembly of Heads of State and Government of the Organization of African Union (AU), on the basis of an indication by the States parties to the Charter.

Mandate: The Commission is empowered to: 1. undertake studies and research and to host conferences etc. in the field of human and peoples' rights; 2. cooperate with other African and international institutions concerned with the promotion and protection of human rights; and 3. to develop and formulate principles and rules aimed at resolving human rights issues in Africa and upon which African governments can base legislation; 3. interpret the provisions of the Charter at the request of a State party, an institution of the African Union, or an African organization recognized by the AU; 4. consider communications submitted either by States or by individuals or NGOs claiming that a State party has violated one or more of the provisions of the Charter.

Communications

Admissibility Criteria: The admissibility of a communication alleging a human rights violation to the Commission must satisfy the following criteria contained in Art. 56 of the Charter: 1. indicate the names of the author(s) even if they request anonymity; 2. the communication must be compatible with the Charter of the AU and with the ACHPR; 3. the communication must not be written in disparaging or insulting language directed against the State concerned and its institutions or to the AU; 4. it must not be based exclusively on news disseminated through the mass media; 5. domestic remedies must be exhausted, unless that procedure is unduly prolonged; 6. communications must be submitted within a reasonable period from the time domestic remedies are exhausted; and 7. the communication must not have already been settled by another mechanism.

Procedure: A communication will be considered by the Commission if a simple majority of its members so decide. The State party will be notified of the communication in advance of any consideration of the issue by the Commission. In the normal course, after studying the complaint and exhausting all means of reaching an amicable solution to the matter, the Commission will submit a report with recommendations to the Assembly of Heads of State and Government.

When it appears after deliberations that one or more communications appear to relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights, the Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases. The Assembly may then request the Commission to undertake an in-depth study of these cases and make a factual report, accompanied by its findings and recommendations. In case of an emergency, the case may be submitted to the Chairman of the Assembly who may request an in-depth study.

Confidential nature of the procedure: The procedure is entirely confidential.

Binding/non-binding character of recommendations: Recommendations of the African Commission are of a non-binding character, but they do have political influence and can form an important source of recommendations for future action.

Contact Details

The address for submitting petitions/communications is the following:

The African Commission on Human and Peoples' Rights
48 Kairaba Avenue
PO BOX 673, Banjul, The Gambia
Tel.: (220) 4392 962, 437 2070, 4377721-23 or (220) 39 29 63
Fax: (220) 4390 764
E-mail: achpr@achpr.org
Web: <http://www.achpr.org/>

African Court on Human and Peoples' Rights

Legal Basis: The African Court on Human and Peoples' Rights was established pursuant to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights 1998. The Protocol entered into force in 2004.

Composition: The Court consists of eleven judges, nationals of Member States of the AU, elected in an individual capacity for a period of six years from among jurists of high moral character and recognized competence in the field of human rights. No two judges shall be nationals of the same State. Judges can be re-elected only twice.

Mandate: According to Art. 2 of the Protocol, the Court 'complements the mandate of the African Commission on Human and Peoples' Rights. The Court performs two functions: advisory and contentious.

Contentious Jurisdiction: Its jurisdiction extends to all cases and disputes submitted to it concerning the interpretation and application of the Charter, the Protocol, and any other relevant Human Rights instrument ratified by the States concerned. The following are entitled to submit cases to the Court: a) The Commission; b) the State party which had lodged a complaint to the Commission; c) the State party against which the complaint had been lodged at the Commission; d) the State party whose citizen is a victim of a human rights violation; e) African Intergovernmental Organizations. Pursuant to Art. 5(3) of the Protocol, the Court may entitle relevant NGOs with observer status before the Commission, and individuals, to institute cases directly before it subject to the State party making a declaration accepting the competence of the Court to do so (per Art. 34(6) of the Protocol).

Confidentiality of the procedure: The Court shall conduct proceedings in public, but it can also hold proceedings in camera in accordance with the rules of procedure.

Admissibility Criteria: The admissibility of a case will be considered on the basis of the criteria set forth in Art. 56 of the Charter, see above factsheet.

Binding/non-binding character of judgements: Judgments of the Court are final and not subject to appeal. They are binding on the respondent States concerned.

Advisory Jurisdiction: At the request of a Member State of the AU, the AU, any of its organs, or any African organization recognized by the AU, the Court may provide an opinion on any legal matter relating to the Charter or any other relevant human rights instruments, provided that the subject matter of the opinion is not related to a matter being examined by the Commission.

Special Rapporteur on Prisons and Conditions of Detention in Africa

Legal Basis: The position was established by the African Commission on Human and Peoples' Rights at its 20th Ordinary Session, held in 1996.

Mandate: The Special Rapporteur is empowered to examine the situation of persons deprived of their liberty within the territories of State parties to the African Charter on Human and Peoples' Rights. The Rapporteur 1. examines the state of prisons in Africa, makes recommendations with a view to improving conditions; 2. advocates adherence to the Charter and international human rights norms and standards concerning the standards relating to detention, and examines national laws and regulations for compatibility with international standards; 3. at the request of the African Commission [see factsheet above], makes recommendations to the Commission with regard to communications filed by individuals deprived of their liberty, their families, representatives, by NGOs or others concerned persons or institutions; and 4. propose appropriate action in urgent cases; 5. conducts studies into conditions of detention and coordinate with other relevant Special Rapporteurs and Working Groups of the African Commission and the UN; 6. submits annual reports on his/her activities to the Commission, which are publicly disseminated. In order to carry out his/her mandate, the Special Rapporteur shall seek and receive information from various sources, including NGOs, and carry out on-site visits.

Consent of the State concerned to carry out country visits: Prior agreement by the State concerned is necessary to carry out country visits.

Access to places of detention during visits: In accordance with its mandate, in order to discharge its functions effectively, the Special Rapporteur should be given all the necessary cooperation and assistance to carry out on-site visits and receive information from individuals deprived of their liberty, their families, and relevant non-governmental organizations.

Possibility of follow-up visits: The Special Rapporteur has the possibility of follow-up visits, in order to monitor whether States are implementing recommendations.

Confidentiality of the procedure: The Special Rapporteur's reports are published after an integration of comments and observations by the State concerned.

Binding/non-binding character of recommendations: Recommendations of the Special Rapporteur are of a non-binding character, but they do have political influence and can form an important source of recommendations for future action.

Contact Details

The address for submitting information is the following:

The African Commission on Human and Peoples' Rights
48 Kairaba Avenue
PO BOX 673, Banjul, The Gambia
Tel.: (220) 4392 962, 437 2070, 4377721-23
Fax: (220) 4390 764
E-mail: achpr@achpr.org
Web: <http://www.achpr.org/>

Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons in Africa

Legal Basis: The position was established by the African Commission on Human and Peoples' Rights at its 35th Ordinary Session, held in 2004.

Mandate: The Special Rapporteur is empowered to: 1. seek and take action on information concerning refugees, asylum seekers, migrants and internally displaced persons in Africa; 2. to undertake studies and conducting research to enhance the protection of these vulnerable groups; 3. to undertake fact-finding missions to refugee and IDP camps; 4. to send recommendations to governments, and to assist the Member States of the African Union in the development of appropriate policies and laws with regard to the protection of refugees, asylum seekers, migrants and internally displaced persons in Africa; 5. to cooperate with governments, international organizations, and NGOs in this sense; and, 6. to send reports at every ordinary session of the African Commission with regard to the activities undertaken.

Consent of the State concerned to carry out country visits: Prior agreement by the State concerned is necessary to carry out country visits.

Access to places of detention during visits: In accordance with its mandate, in order to discharge its functions effectively, the Special Rapporteur should be given all the necessary cooperation and assistance to carry out on-site visits and receive information from individuals.

Possibility of follow-up visits: The Special Rapporteur has the possibility of follow-up visits, in order to monitor whether States are implementing recommendations.

Confidentiality of the procedure: The Special Rapporteur's reports are published after an integration of comments and observations by the States concerned.

Binding/non-binding character of recommendations: Recommendations of the Special Rapporteur are of a non-binding character, but they do have political influence and can form an important source of recommendations for future action.

Contact Details

The address for submitting information is the following:

The African Commission on Human and Peoples' Rights
48 Kairaba Avenue
PO BOX 673, Banjul, The Gambia
Tel.: (220) 4392 962, 437 2070, 4377721-23
Fax: (220) 4390 764
E-mail: achpr@achpr.org
Web: <http://www.achpr.org/>

Special Rapporteur on the Rights of Women in Africa

Legal Basis: The position was established by the African Commission on Human and Peoples' Rights at its 25th Ordinary Session, held in 1999.

Mandate: The Special Rapporteur is empowered to: 1. work for the promotion and protection of human rights of the women in Africa, and to assist Member States of the African Union to develop and implement policies in this sense, in line with the newly adopted Protocol to the African Charter on Human and Peoples' Rights, relative to the Rights of Women in Africa; 2. carry out fact-finding missions in African countries members of the African Union, in order to investigate *in loco* on the situation of women's rights; 3. to cooperate with governments, international organizations, and NGOs for the promotion and protection of women's rights in Africa; and, 4. to send reports to the African Commission with regard to the activities undertaken.

Consent of the State concerned to carry out country visits: Prior agreement by the State concerned is necessary to carry out country visits.

Access to places of detention during visits: In accordance with its mandate, in order to discharge its functions effectively, the Special Rapporteur should be given all the necessary cooperation and assistance to carry out on-site visits and receive information from individuals.

Possibility of follow-up visits: The Special Rapporteur has the possibility of follow-up visits, in order to monitor whether States are implementing recommendations.

Confidentiality of the procedure: The Special Rapporteur's reports are published after an integration of comments and observations by the States concerned.

Binding/non-binding character of recommendations: Recommendations of the Special Rapporteur are of a non-binding character, but they do have political influence and can form an important source of recommendations for future action.

Contact Details

The address for submitting information is the following:

The African Commission on Human and Peoples' Rights
48 Kairaba Avenue
PO BOX 673, Banjul, The Gambia
Tel.: (220) 4392 962, 437 2070, 4377721-23
Fax: (220) 4390 764
E-mail: achpr@achpr.org
Web: <http://www.achpr.org/>

EUROPEAN SYSTEM

European Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT)

Legal Basis: Established pursuant to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1987 (ECPT).

Composition: The European Committee for the Prevention of Torture (CPT) consists of a number of members equal to that of the State parties, elected by the Committee of Ministers of the Council of Europe by an absolute majority of votes, for a period of four years. They can be re-elected twice.

Mandate: Pursuant to its mandate, the CPT shall organize visit to places of detention within the jurisdiction of State parties where persons are deprived of their liberty by a public authority. Upon ratification of the ECPT, States parties consent to the CPT visiting their territory for the purposes of conducting such visits/inspections.

Access to places of detention during visits: Pursuant to Art. 8 of the ECPT, the CPT, after notifying the government of a State party of its intention to carry out a visit, shall have unlimited access to any places where persons are deprived of their liberty, including the right to move inside such places without restriction. The CPT has the right to travel without restriction in the territory of a State party, and to obtain full information on the places where persons deprived of their liberty are being held. Further, it may interview in private persons deprived of their liberty, and communicate freely with any person whom it believes can supply relevant information, including NGOs.

Preventive/reactive character of country visits: CPT visits are of a preventive character; they aim at strengthening, if necessary, the protection of persons deprived of their liberty from torture and other forms of ill-treatment.

Possibility of follow-up visits: Pursuant to Art. 7(1) of the ECPT, the Committee shall organize both periodic visits and other visits 'as appears to it to be required in the circumstances.'

Confidentiality of the procedure: All the information gathered in relation to a visit, as well as the report of the CPT and its consultations with State parties, are to remain confidential. However, when requested to do so by a State party, the CPT shall publish its report, together with any comments of the State party concerned. Public reporting has though evolved into a generally accepted practice.

Public statement: If a State party fails to cooperate or refuses to improve the situation in the light of the CPT's recommendations, the CPT may decide, after the State party has had an opportunity to make known its views, by a majority of two-thirds of its members, to make a public statement on the matter.

Binding/non-binding character of recommendations: Recommendations of the Committee are of a non-binding character, although they have been very effective in bringing about improved conditions in places of detention.

NGO Input: NGOs can play a role in encouraging the CPT to visit particular countries by providing information on the situation in that country. NGOs may also participate in a country visit, either by meeting directly with members of the CPT, by recommending and assisting with the organising of the CPT to meet with others NGOs or individuals, or by transmitting information in advance of or during their mission on the situation at hand. Apart from this, NGOs may submit reliable and regular information about the human right situation of persons in detention in a particular country at any time to the CPT, which may act to encourage it to prioritise that country and to put it on the list of potential places to visit.

Contact Details

The European Committee for the Prevention of Torture
Council of Europe
F-67075 Strasbourg Cedex
France

Tel.: +33 (0)3 88 41 2388
Fax: + 33 (0)3 88 41 2772
E-mail: cptdoc@coe.int.
Web: <http://www.cpt.coe.int/en/>

European Court of Human Rights

Legal Basis: The European Court of Human Rights (ECtHR), as presently constituted, acts on the basis of European the Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (ECHR) and of Protocol No. 11 of the ECHR.

Composition: The ECtHR is composed of a number of judges equal to that of the Contracting States (47 at present). Judges are elected by the Parliamentary Assembly of the Council of Europe for six year terms.

Mandate: The ECtHR has the mandate to hear cases from individual complaints from persons within the jurisdiction of Contracting States to the ECHR alleging a violation of their rights under the ECHR. It also has the mandate to hear inter-State complaints regarding the alleged violation of rights by a Contracting State.

Admissibility Criteria: Any Contracting State or individual alleging to be a victim of a violation of the Convention by a Contracting State may bring a case before the ECtHR, subject to the following admissibility criteria:

1. An applicant is a national of one of the States bound by the ECHR or otherwise in the territory or under the jurisdiction of that State. The applicant can be a private person or a legal entity, such as a company or association.
2. The applicant must have directly and personally been a victim of the violation of the ECHR that they are alleging.
3. A case will be admissible only if domestic remedies have been exhausted, and the case is then transmitted to the ECtHR within a period of six months from the date on which the final domestic decision was taken.
4. Anonymous applications are not accepted.
5. Applications which are substantially the same as a matter that has already been submitted to, is under examination by, or has been examined by the ECtHR or any other international investigation or settlement procedure, will not be dealt with by the Court.

Procedures before the ECtHR:

The procedure before the ECtHR is adversarial and public. Hearings are public, unless the Chamber/Grand Chamber decides otherwise. Even though individual applicants may present their own cases in the early stages of the proceedings (and afterwards if leave to do so has been granted by the President of the Chamber), legal representation can positively affect the outcome. Applications are dealt with by Chambers; within three months after a Chamber judgement has been issued, any party may request that the case be referred (appealed) to the Grand Chamber if it raises a serious question of interpretation or application or a serious issue of general importance. Judgements issued by the Grand Chambers are final.

Rule 39 Interim Measures: In accordance with Rule 39 of the Rules of the ECtHR, the Chamber (or its President) 'may indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or the proper conduct of the proceedings before it.' A request for such measures⁵ can be introduced to prevent a possible violation of the ECHR. The practise of the ECtHR has been to resort to Rule 39 only in cases where irreversible damage would occur, that is, usually in cases based on Article 2 (right to life) and/or Article 3 (prohibition against torture) of the ECHR (mostly in expulsion and extradition cases).

Binding/non-binding character of judgements: All final judgments of the Court are binding on the respondent States concerned. In accordance with Art. 46 of the ECHR, the Committee of Ministers of the Council of Europe supervises the execution of judgements of the ECtHR.

NGO Input: NGOs can help individuals prepare their initial petition for submission to the Registrar. Once the petition is transmitted to the State, however, the Court encourages, and sometimes requires, petitioners to be legally be represented. Some legal aid is available for this purpose. Even if you are not representing the individual directly, NGOs may assist with the preparation of the case, by documenting evidence and supplying other information for the lawyer. NGOs may also seek the leave of the Court to intervene in a case (these are called amicus briefs), or the Court can seek of their own volition information from other sources in the form of an amicus brief. Moreover, NGOs can play a role in publicising the case and after judgment, the outcome and to put pressure on the government to enforce the judgement. In principle, NGOs can feed information to the Council of Ministers for follow.

Contact Details

European Court of Human Rights
Council of Europe
67075 Strasbourg-Cedex
France

Tel: +33 (0)3 88 41 20 18
Fax: +33 (0)3 88 41 27 30
Web: <http://www.echr.coe.int/echr/>

⁵ Rule 39 interim measures have binding effect since the ECtHR's Grand Chamber Judgment in *Mamatkulov and Askarov v. Turkey* of 4 Feb. 2005, Applications nos. 46827/99 and 46951/99.

Council of Europe Commissioner for Human Rights (CHR)

Legal Basis: Following an initiative by the Council of Europe's Heads of State and Government at their Second Summit in Strasbourg in October 1997, the Committee of Ministers adopted on 7 May 1999 resolution (99) 50 instituting the Office of the Commissioner of Human Rights.

Composition: The CHR is supported by a team of advisors and one special advisor.

Mandate:

The Commissioner for Human Rights is an independent institution within the Council of Europe, mandated to promote the awareness of and respect for human rights in 47 Council of Europe member states.

Among its main activities, the Commissioner seeks to engage in permanent dialogue with Council of Europe Member States and conducts official country visits for a comprehensive evaluation of the human rights situation. The Commissioner's reports contain both an analysis of human rights issues (including detention) and detailed recommendations about possible ways of improvement. The reports are presented to the Council of Europe's Committee of Ministers and the Parliamentary Assembly and subsequently published.

The Commissioner closely cooperates with national Ombudsmen, National Human Rights Institutions, international Ombudsmen and other structures entrusted to protect human rights. When appropriate, the Commissioner issues thematic recommendations regarding a specific human rights issue in a single Member State (or several).

The Commissioner also publishes thematic viewpoints. In the context of detention, please refer to the March 2007 viewpoint 'prisoners should be treated with dignity' addressing detention conditions in prisons and the March 2008 viewpoint 'States should not impose penalties on arriving asylum-seekers' addressing the detention of asylum seekers, available at: http://www.coe.int/t/commissioner/default_en.asp.

Consent of the State concerned to carry out country visits: Prior agreement with the concerned State is necessary to carry out country visits.

Preventive/reactive character of country visits: The Commissioner's visits may have both, preventive and reactive characters.

Possibility of follow-up visits: The Commissioner undertakes follow-up visits, in order to monitor whether States are implementing his/her recommendations.

Confidentiality of the procedure: The Commissioner presents his/her report to the concerned State, which, in agreement with the State, may later be published together with the State's comments.

Binding/non-binding character of recommendations: Recommendations of the European Commissioner are of a non-binding character, but they do have political influence and can form an important source of recommendations for future action.

Contact Details

Council of Europe Commissioner for Human Rights
Council of Europe
F-67075 Strasbourg Cedex
France

Tel: +33 (0)3 88 41 34 21
Fax: +33 (0)3 90 21 50 53
E-mail: commissioner@coe.int
Web: <http://www.coe.int/t/commissioner/>