Submission by the Civil Society Prison Reform Initiative to the Portfolio Committee on Social Development in respect of the Children's Amendment Bill [b 19b-2006]

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Prepared by L Muntingh and J Mujuzi

Introduction

1. The Civil Society Prison Reform Initiative (CSPRI) was established in 2003 and is a project of the Community Law Centre at the University of the Western Cape. CSPRI was established in response to the limited civil society participation in the discourse on prison and penal reform in South Africa. To address this, four broad focus areas were developed:
    - Developing and strengthening civil society involvement and oversight over corrections
    - Promotion of non-custodial sentencing and penal reform
    - Improving prison governance
    - Improving offender reintegration services
2. This submission will focus on the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) and the Optional Protocol to the Convention against Torture (OPCAT), and their applicability to the Children's Amendment Bill [B 19B 2006] (the Bill). South Africa ratified CAT in December 1998 and signed OPCAT in June 2006.
3. This submission is supportive of the Bill and we welcome the measures to provide children with additional protection, especially when they are deprived of their liberty. The submission will therefore aim to strengthen the measures proposed in the Bill. It is regrettably the case that the torture, cruel, inhuman and degrading treatment of children still take place in South African facilities where children are detained or temporarily reside. Widespread abuse and what would amount to torture was reported in 2005 at the George Hofmeyer High School, a school of industries.[1] A more

[1] The following are some of the major concerns raised in the DQA Report:
- Some of the children have been threatened with regard to their school progress and possible removal from the school.
- Many children experience teachers and hostel staff being rude to them in terms of swearing at them and calling them humiliating names.

recent case involving the assault and solitary confinement of a group of children at Ethokomala Reform School in Mpumalanga provided further evidence that children are extremely vulnerable when deprived of their liberty.[2] Conditions at Enkuselweni Place of Safety recently reported on also reflected the vulnerability of children.[3]

4. The Committee's attention is also drawn to the fact that despite South Africa's ratification of CAT in 1998 and the requirement in Article 4 of the Convention to criminalise torture, this has not been done yet.[4] The UN Committee against Torture lamented the absence of such legislation in its *Concluding Remarks* on South Africa's *Initial Report* in November 2006.[5]
5. The right to freedom and security of the person is described in five subsections in the Constitution, two of which are non-derogable; the right not be tortured and the right not be treated or punished in a cruel, inhuman or degrading way.[6] The international ban on the use of torture also has the enhanced status of a peremptory norm of

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- Children have been denied telephone calls and visits to family on the basis of the hostel/level at which they have been placed.
- Restraint may only be used in extreme situations where a child may be a danger to him or herself and/or others and no restraint technique in child and youth care or education practice exists where either staff or children are permitted to sit on a child. Unfortunately, such form of restraint has been employed by both the principal and some of the teachers in the recent past, resulting in serious injury to at least one child and humiliation to others. The team [conducting the DQA] has noted that this practice has been stopped, but is concerned that it only stopped as a result of a court order.
- Being a lesbian and behaving like a lesbian is punished through the withdrawal of points and transfer to a hostel which has fewer privileges. Children who choose this sexual orientation are labelled and humiliated.
- Children report that they live under constant threat of losing points and being transferred to a lower level in a hostel or to a hostel which has fewer privileges and where children in such hostels are seen as 'bad',' naughty', or 'vrot '[rotten]. Children are required to obey a long list of rules and ensure that they do not do anything which is on the list of unacceptable behaviours. If they make mistakes in this regard they lose points. While this does not appear to affect those girls who have managed to keep points and earn points so that they constantly receive more privileges and are in the 'good' hostels, those that are hurting emotionally and behaviourally troubled, live under constant threat of failure and 'demotion', which is in effect emotional abuse. This is of particular concern when punishment/loss of points is associated with behaviour (such as self-mutilation) that should [rather] be responded to with therapeutic and developmental interventions. (Initial Report of the *curator ad litem* in the application of *The Centre for Child Law and Eleven Others v The Minister of Justice and Ten Others*, Transvaal Provincial Division of the High Court, Case no. 8523/2005.)

[2] Founding affidavit in *Centre for Child Law v MEC for Education Mpumalanga*

[3] Die Burger 'Kindersentrum stink na riool' 26 July 2007 http://www.dieburger.com/Stories/News/14.0.2883080320.aspx

[4] Article 4: 1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

[5] Committee against Torture *Consideration of reports submitted by states parties under article 19 of the Convention - Conclusions And Recommendations of the Committee Against Torture – South Africa* (Advanced Unedited Version) CAT/C/ZAF/CO/1, 37th Session, 6 – 24 November 2006, 23 November 2006, Geneva.

[6] Section 12(1)(d)-(e)

general international law,[7] meaning that as a peremptory norm, it "*enjoys a higher rank in the international hierarchy than treaty law and even 'ordinary' customary rules. The most conspicuous consequence of this higher rank is that the principle at issue cannot be derogated from by States through international treaties or local or special customs or even general customary rules not endowed with the same normative force.*"[8]

6. The prohibition of torture imposes on states obligations owed to all other members of the international community, each of which has a correlative right.[9] It signals to all states and people under their authority that "the prohibition of torture is an absolute value from which nobody must deviate."[10] At national, level it de-legitimates any law, or administrative or judicial act authorising torture.[11] [12] No state may excuse itself from the application of the peremptory norm. The absoluteness of the ban means that it applies regardless of the status of the victim and the circumstances, be it a state of war, siege, emergency, or whatever. The revulsion with which the torturer is regarded is demonstrated by the very strong judicial rebuke, condemning the torturer as someone who has become "like the pirate and slave trader before him – *hostis humani generis*, an enemy of all mankind",[13] and torture itself as an act of barbarity which "no civilized society condones,"[14] "one of the most evil practices known to man"[15] and "an unqualified evil".[16] [17]

Section 104 of the Bill

7. Section 104(1) of the Bill refers to the strategy concerning child protection and mandates the Minister to develop an inter-sectoral strategy aimed at securing a properly resourced, co-ordinated and managed national child protection system. It is noted in the draft that the Department of Correctional Services is not mentioned as a

[7] See the House of Lords decision in *A (FC) and others (FC) v. Secretary of State for the Home Department* (2004); *A and others (FC) and others v. Secretary of State for the Home Department* [2005] UKHL 71 para 33. See also *R v. Bow Street Metropolitan Stipendiary Magistrate, Ex p Pinochet Ugarte (No 3) [2000] 1 AC 147, 197-199; Prosecutor v. Furundzija* ICTY (Trial Chamber) judgment of 10 December 1998 at paras 147-157.
[8] *Prosecutor v. Furundzija* ICTY (Trial Chamber) Judgment of 10 December 1998 at para 153.
[9] *Prosecutor v. Furundzija* Para 151.
[10] *Prosecutor v. Furundzija* Para 154.
[11] *Prosecutor v. Furundzija* Para 155.
[12] See Fernandez and Muntingh (forthcoming) *The Criminalisation of Torture in South Africa*, CSPRI Research Report.
[13] *Filartiga v. Pena-Irala [*1980] 630 F (2nd Series) 876 US Court of Appeals 2nd Circuit 890.
[14] *A (FC) and others v. Secretary of State for the Home Department* para 67.
[15] Para 101.
[16] Ibid at Para 160.
[17] See Fernandez and Muntingh (forthcoming) *The Criminalisation of Torture in South Africa*, CSPRI Research Report.

specific department to be consulted as is the case with Education, Finance, Health and Justice. Although the Department of Correctional Services is responsible for a relatively small number of children, the Correctional Services Act (111 of 1998) in Section 19 places a number of significant duties on the Department.[18] It is therefore important to ensure that the Department of Correctional Services' interventions with children are aligned to a supportive of the inter-sectoral strategy aimed at securing a properly resourced, co-ordinated and managed national child protection system.

Sections 106 and 139 of the Bill

8. Section 139 deals with the discipline of children and Section 139(2) attempts to protect children against punishment that is cruel, inhumane and degrading. It further specifically prohibits the use of corporal punishment.
9. Section 139(5)(a) and (b) deals with the training of staff in respect of the prohibition of corporal punishment and the promotion of appropriate discipline.
10. While we are supportive of these measures, the Bill raises a number of issues with reference to CAT. The focus on discipline may not be of sufficient scope to provide adequate protection for children against torture and other cruel, inhuman or degrading treatment or punishment, as alluded to in Section 139(1) of the Bill with reference to Section 12(1)(c), (d) and (e) of the Constitution. Children may be subjected to torture and other cruel, inhuman or degrading treatment outside the context of discipline.
11. Section 106 of the Bill in fact makes reference to a child that has been 'abused in a manner causing physical injury, sexually abused or deliberately neglected'. This definition is in fact limiting, as it does not include mental suffering.
12. In view of this, it is proposed that the Bill incorporates the definition of torture (Article 1 of CAT) and its absolute prohibition as a general protective measure. The definition reads: *Article 1. For the purposes of this Convention, the term "torture" means*

[18] S 19(1) *(a)* Every prisoner who is a child and is subject to compulsory education must attend and have access to such educational programmes.
(b) Where practicable, all children who are prisoners not subject to compulsory education must be allowed access to educational programmes.
(2) The Commissioner must provide every prisoner who is a child with social work services, religious care, recreational programmes and psychological services.
(3) The Commissioner must, if practicable, ensure that prisoners who are children remain in contact with their families through additional visits and by other means.

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

13. It is furthermore important to read the definition in Article 1 together with Article 16 of CAT: *Article 16(1) Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.*

14. With reference to Section 139(5) (a) and (b) providing for education and awareness raising as well as the promotion of appropriate discipline, we draw the Committee's attention to Article 10 of CAT: *1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. 2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.*

15. The prevention of torture remains after all the most important objective of CAT and the Committee against Torture has on numerous occasions reminded states parties that this starts with ensuring that persons working with detained persons (including children) are made aware of the absolute prohibition of torture.[19] From the wording of Article 10 one can assume that the Department of Social Development should at minimum have a policy in respect of the prevention of torture or other cruel, inhuman and degrading treatment or punishment. Such a policy, the regulations and operating procedures should form the basis for the training of staff, ensuring that every official

[19] C Ingelse *The UN Committee against Torture – An Assessment* (2001) p. 271.

is familiar with the required standards and what is considered as prohibited and a violation of CAT.

16. We therefore submit that Section 139(4) and (5) be amended to incorporate the general prohibition of torture and other cruel, inhuman and degrading treatment or punishment, and not be limited to punishment and corporal punishment in particular.

Sections 191-194 of the Bill

17. Section 191 provides for the establishment of child and youth care centres. These centres provide for a wide range of services and various categories of children to be placed there. Some of these may have more relaxed security than others. In view of this, we draw the Committee's attention to Article 11 of CAT: *Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.* States parties are required to regularly and systematically supervise (visit) places of detention and in the opinion of the Committee against Torture, visits to places of detention should be conducted unannounced.[20] This Article places a further obligation on states parties to review, on a systematic basis the rules, instructions, methods and practices regarding detained persons. Systematic would in the first instance mean that such a review is methodical, thorough and comprehensive; not only in scope but also in depth. It would therefore cover all areas where people are deprived of their liberty and all newly identified concerns, emanating from, for example, case law. There is no requirement as to how regular such a review should be done but 'keep under systematic review' implies that it should be done regularly, and that such rules, instructions, methods and practices should not be left to gather proverbial dust. The question on the regularity of a systematic review, required by Article 11, should therefore take its cue from Article 19(1) of CAT[21]; not necessarily implying that this should be done every four years but

[20] C Ingelse *The UN Committee against Torture – An Assessment* (2001) p.272.

[21] Art 19 (1) The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

that there should at minimum be a plan for systematic review coinciding with the four-year cycle of reporting.

18. The norms and standards referred to in Section 194 would then fall under the rules and procedures referred to Article 11 of CAT and we therefore submit that Section 194 be amended to provide for the regular review of these norms and standards. It is furthermore our submission that such a review should be done every four years at least.
19. There is at present no independent visiting mechanism in place to provide oversight over places where children are detained and reside. In line with Article 11 it is thus submitted that such a structure be provided for by law to conduct visits on a regular and unannounced basis to youth care centres. The purpose of such visits will be to inspect facilities and services rendered, to consult with children and record complaints, to resolve complaints lodged by children, to address other concerns with the management of the youth care centre, and if need be, report unresolved complaints and / or rights violations to the appropriate authority.
20. The value of visits to places where people are deprived of their liberty to prevent torture has been well-documented by the European Committee for the Prevention of Torture. Although not all places designated as youth care centres are secure facilities, it remains nonetheless important that an independent visiting mechanism is in place for all places designated as youth care centres. The problems reported on in paragraph 3 above may well have been prevented if there was an independent visiting mechanism in place to deal with complaints from children and inspect facilities on a regular basis.
21. The Independent Prison Visitors, created under Chapter 10 of the Correctional Services Act (111 of 1998) have done much to promote transparency in the prison system and resolve complaints lodged by prisoners.[22] This may therefore be a possible model to consider in respect of oversight over child and youth care centres. We therefore propose that the Committee seeks the views of the Department of Social Development as with regard to the structure and functions of such an independent visiting mechanism. We will however propose that such visits be conducted regularly by suitably trained people drawn from the local community and that there is a measure of judicial involvement in such visits, possibly through local senior

[22] Gallinetti, J (2004) *Report of the evaluation of the Independent Prison Visitors (IPV) System*, CSPRI Research Paper No. 5 available at http://www.communitylawcentre.org.za/cspri/publications/EVALUATION_OF_THE_IPV_SYSTEM.pdf

magistrates or a magistrate designated by the senior magistrate to assist with such visits.

22. We support the norms and standards set out under Section 194 of the Bill. However, we wish to draw the Committee's attention to Article 13 of the CAT: *Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.*
23. Article 13 of CAT gives everyone who claims to have been tortured the right to complain and to have the case examined promptly and impartially by the competent authorities. Supported by Article 12 (see below), these are the essential requirements of a complaints and investigative regime envisaged by CAT. Any complaints mechanism should thus be accessible to victims and furthermore, protect victims from secondary victimisation. It should further be pointed out that the investigation of a complaint of torture is not subject to the lodging of a complaint, and an investigation should commence if there are reasonable grounds to believe that torture had taken place.[23] A further duty imposed by Article 13 is that such a complaints mechanism must be accessible in any territory and thus all facilities under its jurisdiction. There are therefore no territories or facilities that are excluded.
24. The findings of a study conducted by The Redress Trust[24] across many countries highlight a number of problems in connection with the lodging of complaints.[25] From the research, it is evident that even when survivors of torture know about the existence of complaints procedures, they seldom know how to go about lodging their complaints. Those survivors who do know how to go about lodging a complaint tend to refrain from doing so because of the number of hurdles, both physical and otherwise, that they are likely to encounter.[26] Once victims lodge their complaints,

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[23] Ingelse (note 20 above) 336.
[24] Redress Trust (2004) *Taking Complaints of Torture Seriously – Rights of Victims and responsibilities of Authorities*, The Redress Trust, London, http://www.redress.org/publications/PoliceComplaints.pdf , Accessed 5 February 2006.
[25] Redress Trust (2004) *Taking Complaints of Torture Seriously – Rights of Victims and responsibilities of Authorities*, The Redress Trust, London, http://www.redress.org/publications/PoliceComplaints.pdf , Accessed 5 February 2006.
[26] These impediments are known to be the following:

- the geographic remoteness of the complaints office, which is a thoroughly bedevilling hurdle for people in rural areas;
- fears of personal safety on the part of the survivors, especially where a complaints-receiving office is located in the very same office where the torture took place;

they are often forced to endure deliberately manufactured situations, the combined purpose of which is to undermine, if not to sabotage, a complaint. Perpetrators often pressurise the victim to withdraw the complaint, even to the point of offering them bribes.[27] Very often, victims do not pursue their complaints out of fear of suffering physical harm, threats to their lives, including those of their families, witnesses and human rights lawyers.[28] Where complaints are lodged in good time, cases tend to drag on endlessly, resulting in proceedings being discontinued.[29] In many countries that lack such legislation dealing specifically with torture, the laws of prescription apply. This means that after a period of time a complaint prescribes or expires, which disregards the fact that, like rape, one of the traumatic effects of torture is that victims do not rush to lodge the complaint immediately after they have been tortured. In countries without clear-cut rules governing the reporting and recording of complaints, the authorities who are entitled to receive complaints tend to enjoy wide discretionary power in dealing with complaints. In such countries, complaints may be dismissed at the reporting stage simply because the complainant, for want of evidence, is unable to name the alleged torturer.[30] Such complaints are then considered incomplete. It also is not unusual in the case of an unregulated procedure for the complaints officer to take down the complaint, only to deny afterwards that it was ever lodged. And because the complainant is not given a copy of the complaint,

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- reluctance to bring a complaint because of a sense of shame resulting from what the victim endured (for example sexual assault); a real or perceived lack of openness and approachability in the people staffing the complaints office;
- officials having a rude and dismissive attitude;
- the need to appear in person, coupled with the intimidating formalities of making sworn written statements or affidavits accompanied by a raft of other documents to establish probable cause.(Redress Trust (2004) *Taking Complaints of Torture Seriously – Rights of Victims and responsibilities of Authorities*, The Redress Trust, London, http://www.redress.org/publications/PoliceComplaints.pdf , Accessed 5 February 2006, p. 17.)

[27] A UN Working Group on Pre-trial Detention reported in 2005 that in South Africa accused persons in police custody were vulnerable to being pressurised into renouncing their rights. See UN Working Group Police accountability- Promoting civilian oversight available at http://www.policeaccountability.co.za/Currentinfo/ci-detail.asp?art-ID=400

[28] Redress Trust (2004) *Taking Complaints of Torture Seriously – Rights of Victims and responsibilities of Authorities*, The Redress Trust, London, http://www.redress.org/publications/PoliceComplaints.pdf , Accessed 5 February 2006, p. 36.

[29] Redress Trust (2004) *Taking Complaints of Torture Seriously – Rights of Victims and responsibilities of Authorities*, The Redress Trust, London, http://www.redress.org/publications/PoliceComplaints.pdf , Accessed 5 February 2006, p. 34.

[30] Redress Trust (2004) *Taking Complaints of Torture Seriously – Rights of Victims and responsibilities of Authorities*, The Redress Trust, London, http://www.redress.org/publications/PoliceComplaints.pdf , Accessed 5 February 2006, p. 37.

the matter simply peters out.[31] But, even where complaints procedures exist, officials in some countries are known not only to refuse to receive complaints, but also to suppress or destroy whatever evidence there is that implicates alleged perpetrators.[32]

25. Given the complexities outlined above and the vulnerability of children, we submit that Section 194(2) be amended to make specific reference to the development of norms and standards that will apply to all child and youth care centres in respect of complaints mechanisms and procedures.

26. We also wish to draw the Committee's Attention to Article 12 of the CAT: *Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.*

27. Article 12 obliges states parties to investigate cases of alleged torture in a prompt and impartial manner and this duty is not qualified by the discretion of the authorities. The Article does not require a formal complaint to have been lodged but '*wherever there is reasonable ground to believe that an act of torture has been committed*.' [33] There are no international guidelines as to what 'prompt' means.[34] Perhaps the most concrete meaning was given by the European Court of Human Rights in its decision in *Assenov and Others* vs *Bulgaria*, suggesting that 'prompt' means 'in the immediate aftermath of the incident, when memories are fresh.'[35] The Committee against Torture has, however, found individual breaches of Article 12 due to the excessive delay before the commencement of an investigation; in one case 15 months.[36] A high premium is furthermore placed on the *impartiality* of the investigation, as this is central to its credibility remaining intact. The term 'impartiality' means free from undue bias and is conceptually different from 'independence', which suggests that the investigation is

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[31] Redress Trust (2004) *Taking Complaints of Torture Seriously – Rights of Victims and responsibilities of Authorities*, The Redress Trust, London, http://www.redress.org/publications/PoliceComplaints.pdf , Accessed 5 February 2006, p. 37.

[32] Redress Trust (2004) *Taking Complaints of Torture Seriously – Rights of Victims and responsibilities of Authorities*, The Redress Trust, London, http://www.redress.org/publications/PoliceComplaints.pdf , Accessed 5 February 2006, p. 37-38.

[33] The European Committee for the Prevention of Torture's (ECPT) view is that even if there has been no formal complaint but that 'credible information' has come to light regarding the-ill treatment of people deprived of their liberty '*such authorities should be under legal obligation to undertake an investigation*'. (The ECPT Standards: "Substantive sections of the ECPT's General Reports", (2004) Council of Europe. 75.)

[34] For an overview of international statements, declarations, reports, and case law on the elusive meaning of 'prompt', see Redress Trust (2004) *Taking Complaints of Torture Seriously – Rights of Victims and responsibilities of Authorities*, The Redress Trust, London, http://www.redress.org/publications/PoliceComplaints.pdf , Accessed 5 February 2006 pp. 15-17.

[35] *Assenov and Others vs Bulgaria* (1999) 28 EHRR 652.

[36] *Halimi-Nedzibi v Austria*, complaint 8/1991, A/49/44, Annex V, p. 40, § 15, Reported in Ingelse (note 20 above) 356.

not in the hands of bodies or persons who have close personal or professional links with the alleged perpetrators. The two notions are, however, closely interlinked, as a lack of independence is commonly seen as an indicator of partiality.[37] The European Court of Human Rights has stated that 'independence' not only means a lack of hierarchical or institutional connection, but also practical independence.[38] The Court has also stressed the need for the investigation to be open to public scrutiny to ensure its legitimacy and to secure accountability in practice as well as in theory, to maintain public confidence in the adherence to the rule of law by the authorities, and to prevent any appearance of collusion in or tolerance of unlawful acts.[39]

28. In view of the requirement of Article 12 of CAT, we submit that Section 194(2) be amended to provide for norms and standards applicable to all youth care centres in respect of the investigation of allegations of torture and other forms of cruel, inhuman and degrading treatment or punishment.

OPCAT

29. As noted above, South Africa signed OPCAT in June 2006. OPCAT makes provision for two unique procedures in international law. Firstly, states parties are subject to unannounced visits and unrestricted access by the international Sub-Committee on the Prevention of Torture to any place of detention in the jurisdiction of signatories to the Protocol. Secondly, the Protocol obliges states parties to establish a National Preventive Mechanism (NPM) with essentially the same powers.[40] To grant this level of unrestricted access to the detention places of sovereign states is indeed revolutionary. It should be emphasised that signing OPCAT is optional and therefore reflects a willingness of states parties to submit themselves to international, as well as domestic scrutiny insofar as places of detention are concerned.

30. Article 4 of OPCAT sets out the places that may be visited by the international Sub-Committee on the Prevention of Torture and the National Preventive Mechanism: *1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms*

[37] Redress Trust *Taking Complaints of Torture Seriously – Rights of Victims and responsibilities of Authorities* (2004) The Redress Trust, London, http://www.redress.org/publications/PoliceComplaints.pdf , Accessed 5 February 2006, p. 17.
[38] *Finucane vs United Kingdom* (2003) 22 EHRR 29 para 68.
[39] *Assenov and Others v Bulgaria* (n 125) para 140.
[40] For a more detailed description see Long D and Boeglin Naumovic N (2004) *Optional Protocol to the Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment,* APT and Inter-American institute for Human Rights, San Jose and Geneva.

referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment. 2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

31. It therefore follows that all places where children are detained and/or reside from which they cannot leave freely fall under the Protocol. OPCAT would have particular application to child and youth care centres. We therefore submit that the Bill needs to be amended to provide for the full cooperation of child and youth care centre management as well as the Department of Social Development when the international Sub-Committee on the Prevention of Torture and/or National Preventive Mechanism visits such a facility. Full cooperation will in this regard refer at least to unrestricted access to facilities, children, staff and documentation.

32. Article 20 describes this in more detail and we draw the Committee's attention to this: *In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them: (a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location; (b) Access to all information referring to the treatment of those persons as well as their conditions of detention; (c) Access to all places of detention and their installations and facilities; (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information; (e) The liberty to choose the places they want to visit and the persons they want to interview; (f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.*

33. We submit that such an amendment will give effect to Article 19 of OPCAT: The national preventive mechanisms shall be granted at a minimum the power: *(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment; (b) To make recommendations to the relevant authorities with the aim of improving the treatment and the*

conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations; (c) To submit proposals and observations concerning existing or draft legislation.

End

Contact details:

L Muntingh & J Mujuzi

Tel 021-959 2950

lmuntingh@uwc.ac.za jmujuzi@uwc.ac.za