

## **Institutional Endorsement of NRCAT's statement on OPCAT**

**The following position statement was formally voted on and adopted at the Annual Meeting of the Northern California-Nevada Conference of the UCC in May 2011. The pages that follow provide the supporting documentation for the proposal and follow a prescribed format for position statements put forward at the Annual Meeting. This document could be adapted to create a resolution document appropriate for your own religious institution, whether a local congregation, a regional body like the UCC Conference, or a national body.**

### **POSITION TO BE VOTED**

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| <p>The 2011 Annual Meeting of the Northern California-Nevada Conference of the United Church of Christ hereby endorses the National Religious Campaign Against Torture Statement on the Optional Protocol to the Convention Against Torture and encourages all local churches in the Conference to do the same.</p> |
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If you have questions about this document or how to use it, please contact NRCAT staff at [campaign@nrcat.org](mailto:campaign@nrcat.org).

You will also find additional resources and information about the Optional Protocol to the Convention Against Torture (OPCAT) on our website: [www.nrcat.org/opcat](http://www.nrcat.org/opcat).

PROPOSED

POSITION STATEMENT

The NCNC-UCC Calls for an End to Torture:  
Endorsing the NRCAT Statement in Support of  
the Optional Protocol to the Convention Against Torture

submitted to  
Northern California-Nevada Conference  
United Church of Christ

submitted by  
NCNC-UCC Uniting to Prevent Torture  
February, 2011

**NAME OF PROPOSING GROUP**

NCNC-UCC Uniting to Prevent Torture

**TITLE OF PROPOSAL**

The NCNC-UCC Calls for an End to Torture: Endorsing the NRCAT Statement in Support of  
the Optional Protocol to the Convention Against Torture

**TYPE OF PROPOSAL**

This proposal contemplates a Position Statement to be taken by the Northern California-Nevada  
Conference of the United Church of Christ.

**BRIEF STATEMENT OF PURPOSE**

This proposal calls on the Northern California-Nevada Conference of the United Church of  
Christ to join religious institutions and people of faith across the United States in calling for the  
President of the United States to sign, and for the U.S. Senate to ratify, the Optional Protocol to  
the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or  
Punishment (OPCAT). The Conference can carry out this purpose by endorsing the National  
Religious Campaign Against Torture Statement on the Optional Protocol to the Convention  
Against Torture (the NRCAT Statement).

For your convenience, the NRCAT Statement is attached to this Proposal as Appendix A. The  
OPCAT is attached as Appendix B. Frequently Asked Questions About the OPCAT is attached  
as Appendix C.

**POSITION TO BE VOTED**

The 2011 Annual Meeting of the Northern California-Nevada Conference of the United Church  
of Christ hereby endorses the National Religious Campaign Against Torture Statement on the  
Optional Protocol to the Convention Against Torture and encourages all local churches in the  
Conference to do the same.

## **BACKGROUND STATEMENT**

Torture is difficult to think about. We tend to think of torture as a military prerogative, a necessary evil, perhaps; something that only happens in the throes of wartime and only in faraway places. Torture occurs all over the world, however, and we in the United States are not immune from its reach. While the abuse of detainees at Guantanamo and Abu Ghraib are well known, in U.S. prisons, prisoners are held in isolation for weeks, months, even years. Women giving birth while incarcerated have been shackled during delivery, often resulting in permanent injuries. People held in jails, immigrant and juvenile facilities, psychiatric institutions, and other places of detention routinely report being beaten, sexually assaulted, and otherwise mistreated.

These practices constitute torture or inhuman and degrading treatment under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention Against Torture). These practices are also a violation of U.S. law, and they are contrary to the moral and ethical teachings of every religious tradition. There is no domestic or international authority charged with overseeing detention facilities, however, which means these abuses can, and mostly likely will continue. Torture needs secrecy to take root and grow. The OPCAT is designed to bring what has been secret into the light.

The OPCAT contains two provisions that will help prevent torture from occurring in U.S. detention facilities. First, the OPCAT requires each ratifying country to establish National Preventative Mechanisms (NPMs) to continually monitor the treatment of prisoners and other detainees. Second, the OPCAT allows for international oversight of places of confinement to ensure that torture and other abuses are not occurring. The continual oversight, from internal and external authorities, will address the possibility for the development of both systemic and incidental torture in ratifying countries.

The United States has a long history of leadership in ending torture. We were a prominent driver in the creation of the Geneva Conventions and a leading proponent of the Convention Against Torture, which was signed by former president Ronald Reagan in 1988, and ratified by the U.S. Senate in 1994. The OPCAT is an important tool for actually implementing that treaty. As of October 2010, 74 nations have signed the OPCAT, and 50 nations have ratified it. It is time for the United States to do the same.

The National Religious Campaign Against Torture (NRCAT), a Washington D.C.-based interfaith human rights organization committed to ending U.S.-sponsored torture, has issued a statement calling on President Obama to sign the OPCAT and for the U.S. Senate to ratify it. People of faith and religious institutions across the United States are joining in signing this statement, believing that by embracing the OPCAT, the United States will extend its world leadership in this area.

By our joining this effort, the Northern California-Nevada Conference of the UCC will strengthen the leadership our denomination has demonstrated on this issue. The United Church of Christ has been an active partner with NRCAT in this movement since its beginning. The UCC is an institutional member of NRCAT and was an early institutional endorser of the NRCAT Statement of Conscience. In keeping with our historic commitment to social justice, we were one of the first denominations to speak out against post-9/11 U.S.-sponsored torture.

Former UCC General Minister and President Rev. Dr. John Thomas played a very public role in NRCAT's work to end torture. In 2007, Rev. Thomas was a signer to a full-page anti-torture ad that appeared in the *Des Moines Register* (the same ad ran in the *New York Times*). In November, 2008, Rev. Thomas urged president-elect Obama and the new Congress to move speedily to sign Executive Orders banning torture and to investigate U.S. involvement in post-9/11 torture practices. Our current President and General Minister, Rev. Geoffrey Black, is also endorser the NRCAT Statement of Conscience. National UCC Justice and Witness Ministry staffers Mike Neuroth (Policy Advocate for International Issues) and Rev. Sala Nolan Gonzales (Minister for Criminal Justice and Human Rights) have been key players in NRCAT discernment and decision-making.

UCC conferences have also taken strong stands on this issue. In 2006, the Connecticut Conference adopted a resolution against torture, as did the New Hampshire Conference in 2008. In May, 2008, the UCC Conference Ministers of the New England Region issued a Call for Prophetic Witness to Abolish Torture, enlisting "clergy and members of the United Church of Christ congregations in our six New England Conferences to join with us in this witness to abolish U.S.-sponsored torture."

Individual UCC churches across the country have also joined in this work. Twenty-four UCC churches participated in NRCAT's Banner Across America Project. Participants flew "Torture is Wrong" or "Torture is a moral issue" banners on their buildings and placed on their websites statements unequivocally denouncing torture. In the Northern California-Nevada Conference, First Congregational Church of Berkeley joined NRCAT as an institutional member in 2006, and its large anti-torture ministry team works closely with NRCAT and its regional affiliate, the Bay Area Religious Campaign Against Torture (BARCAT), to educate and raise awareness about U.S.-sponsored torture in faith communities throughout northern California. BARCAT also represents these voices of faith before northern California legislators.

By endorsing the NRCAT Statement in support of the Optional Protocol to the Convention Against Torture, the Northern California-Nevada Conference strengthens the UCC's voice as a denominational leader in the movement to end the use of torture and other cruel, inhuman or degrading treatment or punishment in this country and around the world.

## **THEOLOGICAL RATIONALE**

*And God said, 'Let us make humankind in our image, according to our likeness ...' So God created human kind in his image, in the image of God he created them; male and female he created them." (Genesis 1:26a, 27, NRSV)*

As Christians, our commitment to oppose torture is grounded in an understanding of the inherent worth of every human being as modeled for us in the life and teachings of Jesus. We understand that every human being is created in the image of God; that every human life is a sacred reflection of God's glory. "What are human beings that you are mindful of them," the Psalmist asks. "... you have made them a little lower than God, and crowned them with glory and honor." (Psalm 8:4-5) To violate what God has deemed sacred, then, must be to violate God. "Truly I tell you, just as you did it to one of the least of these who are members of my family, you did it to me." (Matthew 25:40)

For those of us who claim an Abrahamic tradition, the divinely sanctioned value of humankind extends to every human being, including those we might consider enemies or aliens or criminals or prisoners—those subject to torture and degrading treatment at the hands of U.S. agents in detention centers outside the country and in jails and prisons and other places of detention within our borders. Consider that God gives Cain special protection after he murders his brother, Abel—“so that no one who came upon him would kill him” (Genesis 4:15b). So sacred is human life God would preserve who we may judge the least deserving among us. We are commanded—by Jesus’ words and by his example—to do no less.

In the narratives of Jesus’ life and teaching, it is clear that his attention was all-inclusive, often favoring the outcast and untouchable—women, the sick, the poor, those of ill-repute, criminals, enemies of the State, Romans and gentiles. In so doing, Jesus demonstrated for us the biblical imperative that commands us to support and preserve human life; never to degrade or destroy it. We are commanded to see in the journey of each soul the desire, however obscure, to return to God.

To understand the inherent and essential sacredness of every human life *and to be Christian* is to acknowledge an obligation to actively value and respect the sacredness of every human life. To be engaged in this project is to be engaged in bringing about the kingdom of God on earth. Torture, and other cruel, inhuman, or degrading ways that human beings treat other human beings are absolutely and fundamentally contrary to that commandment. Consider the very act of the incarnation. The Word having become flesh and lived among us (John 1:14) speaks to the value and the promise God bestows on each and every one of us. “For God so loved the world . . .” (John 3:16) If we are to honor that gift of that life, which was tortured and abused and hung on a cross, we must remain actively committed to ending practices of torture by which we crucify him over and over again in detention facilities all over the United States and the world.

## **RESOURCES**

### **Books**

*Because It Is Wrong: Torture, Privacy and Presidential Power In the Age of Terror.*  
Charles Fried and Gregory Fried (New York: W. W. Norton & Company, 2010)

*The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals.* Jane Mayer (New York: Doubleday, 2008)

*Torture and Democracy.*

Darius Rejali (Princeton, NJ: Princeton University Press, 2007)

### **Group Study Program**

Louise Specht and Geoffrey Gaskins. “Disarming the Ticking Time Bomb.” A presentation of the BARCAT Speakers’ Bureau. (Berkeley: Bay Area Religious Campaign Against Torture)  
Contact [Louise Specht or Geoffrey Gaskins](mailto:louise@barcat.org) to arrange a presentation. (louise@barcat.org)

### **Websites**

National Religious Campaign Against Torture website ([www.nrcat.org](http://www.nrcat.org)). You can download from NRCAT’s website “Ending U.S. Torture Forever,” a video produced by NRCAT designed for

use in small group study sessions. Other videos are coming online by the summer. Sermon talking points and worship resources are also available.

### **Torture in U.S. Prisons**

To download NRCAT's "[Resource List for Torture in U.S. Prisons](http://www.nrcat.org/index.php?option=com_content&task=view&id=427&Itemid=308)," visit [http://www.nrcat.org/index.php?option=com\\_content&task=view&id=427&Itemid=308](http://www.nrcat.org/index.php?option=com_content&task=view&id=427&Itemid=308).

### **RECOMMENDATIONS FOR IMPLEMENTATION**

Recommendations for implementation include:

- The Northern California-Nevada Conference of the United Church of Christ will authorize \_\_\_\_\_ to endorse, on behalf of the Conference, the National Religious Campaign Against Torture [National Religious Campaign Against Torture Statement on the Optional Protocol to the Convention Against Torture](#). The endorsement procedure can be found online at [http://salsa.democracyinaction.org/o/2162/p/salsa/web/common/public/signup?signup\\_page\\_KEY=5547](http://salsa.democracyinaction.org/o/2162/p/salsa/web/common/public/signup?signup_page_KEY=5547).
- The NCNC Conference Minister will issue a pastoral letter encouraging Conference churches to (1) prayerfully consider endorsing the NRCAT Statement as religious institutions and (2) to encourage their members to consider endorsing the Statement as individuals.

UCC members of The Bay Area Religious Campaign Against Torture are ready to help the Conference carry out these recommendations, and to assist Conference churches interested raising awareness in their congregations about this issue. For more information, please call or email either Louise Specht or Geoffrey Gaskins (see Contact Persons heading below).

### **FISCAL IMPACT**

We anticipate no significant cost likely to be incurred in the implementation of this position.

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## APPENDIX A

### National Religious Campaign Against Torture Statement on the Optional Protocol to the Convention Against Torture

As people of faith, we were horrified to learn of the abuses perpetrated by our government on those detained as suspected terrorists in the years after the 9/11 attacks. Torture and abuse are contrary to our belief in the fundamental dignity of each human being and violate U.S. law.

We were pleased when President Obama signed the executive order in 2009 banning torture; however, the work to stop torture forever is not yet done. We need to codify the principles of that executive order into law, and, most importantly, we need a government-funded Commission of Inquiry to conduct a full and open investigation into our use of torture and to make recommendations to ensure that torture by the U.S. never happens again. We also need to work to ensure that we do everything we can to encourage all nations of the world to end torture once and for all.

One of the most promising international safeguards to prevent torture is the Optional Protocol to the Convention Against Torture (OPCAT). This protocol builds upon the UN Convention Against Torture by requiring each signatory country to develop its own independent process of overseeing its detention facilities (including prisons, police stations, immigrant detention centers) to help ensure that cruel, inhuman, or degrading treatment, including torture, does not occur anywhere in that country. It also requires each signatory country to make its detention facilities accessible to occasional review by an international panel.

The United States was one of the leading proponents of the Convention Against Torture, signing the treaty in 1994. For those nations ratifying OPCAT, it is an important tool for implementing that treaty. By bringing transparency to detention facilities worldwide, including here in the United States (where the use of extreme isolation, and shackling of women during child birth occurs), OPCAT will dramatically reduce the opportunities for abusive treatment. Cruel, inhuman and degrading treatment can exist only in secrecy; OPCAT is designed to end that secrecy.

As of October 2010, 74 nations have signed OPCAT, and 50 nations have ratified it. It is time for the United States to do the same. We call upon the President of the United States to sign OPCAT and the U.S. Senate to ratify it. Signing and ratifying OPCAT would show the rest of the world that the U.S. is willing to work for an end to the use of torture in a transparent way and that we reject the U.S. use of torture. We also call upon both the President and Congress to support nations that have ratified OPCAT in their efforts to implement mechanisms preventing torture.

All religions believe that nations and individuals can change. Our nation erred when we resorted to torture, but we can take the necessary steps to restore our moral credibility in the international arena. OPCAT is a vehicle for our country, and for all nations of the world, to work for the day when torture is ended, forever.

## **APPENDIX B**

### **Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**

Adopted on 18 December 2002 at the fifty-seventh session of the  
General Assembly of the United Nations by resolution

A/RES/57/199.

Protocol is available for signature, ratification and accession as  
from 4 February 2003 (i.e. the date upon which the original of the  
Protocol was established) at United Nations Headquarters in New  
York.

### **PREAMBLE**

The States Parties to the present Protocol,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights,

Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures,

Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention, Have agreed as follows:

## **PART I**

### **General principles**

#### **Article 1**

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

#### **Article 2**

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.
2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.
3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.
4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

#### **Article 3**

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

#### **Article 4**

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms 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.

## **PART II**

### **Subcommittee on Prevention**

#### **Article 5**

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.
2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.
3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.
4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.
5. No two members of the Subcommittee on Prevention may be nationals of the same State.
6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

#### **Article 6**

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.
2.
  - (a) The nominees shall have the nationality of a State Party to the present Protocol;
  - (b) At least one of the two candidates shall have the nationality of the nominating State Party;
  - (c) No more than two nationals of a State Party shall be nominated;
  - (d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.
3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

## **Article 7**

1. The members of the Subcommittee on Prevention shall be elected in the following manner:

(a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;

(b) The initial election shall be held no later than six months after the entry into force of the present Protocol;

(c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;

(d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:

(a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;

(b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;

(c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

## **Article 8**

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

## **Article 9**

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of

those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 ( d).

### **Article 10**

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.
2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:
  - (a) Half the members plus one shall constitute a quorum;
  - (b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;
  - (c) The Subcommittee on Prevention shall meet in camera.
3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

## **PART III**

### **Mandate of the Subcommittee on Prevention**

#### **Article 11**

1. The Subcommittee on Prevention shall:
  - (a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
  - (b) In regard to the national preventive mechanisms:
    - (i) Advise and assist States Parties, when necessary, in their establishment;
    - (ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;
    - (iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
    - (iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

(c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

## **Article 12**

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake:

(a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;

(b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;

(d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

## **Article 13**

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.

2. After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.

3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.

4. If the Subcommittee on Prevention considers it appropriate, it may propose a short followup visit after a regular visit.

## **Article 14**

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:

- (a) Unrestricted 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) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;
  - (c) Subject to paragraph 2 below, unrestricted 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 Subcommittee on Prevention believes may supply relevant information;
  - (e) The liberty to choose the places it wants to visit and the persons it wants to interview.
2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

### **Article 15**

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

### **Article 16**

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.
2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.
3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.
4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

## **PART IV**

### **National preventive mechanisms**

#### **Article 17**

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

#### **Article 18**

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.
2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.
3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.
4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

#### **Article 19**

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.

#### **Article 20**

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.

### **Article 21**

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.
2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

### **Article 22**

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

### **Article 23**

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

## **PART V**

### **Declaration**

#### **Article 24**

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.
2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

## **PART VI**

### **Financial provisions**

#### **Article 25**

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.
2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

#### **Article 26**

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.
2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

## **PART VII**

### **Final provisions**

#### **Article 27**

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

#### **Article 28**

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession,

the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

#### **Article 29**

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

#### **Article 30**

No reservations shall be made to the present Protocol.

#### **Article 31**

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

#### **Article 32**

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

#### **Article 33**

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.
3. Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

#### **Article 34**

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such

communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

### **Article 35**

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

### **Article 36**

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

- (a) Respect the laws and regulations of the visited State;
- (b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

### **Article 37**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

## APPENDIX C

### Frequently Asked Questions About the OPCAT

#### **What is OPCAT?**

OPCAT stands for the Optional Protocol to the Convention Against Torture. It is an international treaty that requires ratifying countries to set up “National Preventative Mechanisms” (NPMs) to ensure that torture does not occur in those countries. To monitor the NPMs, It also allows international inspectors access to all places of confinement under the jurisdiction of ratifying countries.

#### **Why is the OPCAT important?**

The transparency fostered by oversight provisions of the OPCAT are one of the most effective ways to prevent torture and other abuses of prisoners and other vulnerable populations.

#### **What exactly are “national preventative mechanisms”?**

NPMs can take a variety of forms, depending on the needs and governmental structures of a ratifying nation. In the United States, NPMs might comprise several local and regional agencies since we have many state and regional bodies that handle confinement institutions. NPMs have access to information on all persons held in confinement and the ability to visit all areas of detention facilities. They can also interview prisoners. The NPM is the backbone of torture prevention initiatives in ratifying nations.

#### **What are the conditions and provisions for international oversight?**

The overseeing body is the United Nations’ Subcommittee on the Prevention of Torture, which is made up of twenty-five experts in criminal law, prison administration, and other relevant issue areas. Each year the Subcommittee selects a few ratifying nations to visit. At least two Subcommittee members, with other experts where appropriate, make the visit and given access to confinement facilities (barring a demonstrated national security concern) and inmates and other detainees. The Subcommittee produces a confidential report with its recommendations to prevent torture, which the ratifying nation may choose to accept in whole or in part. The Subcommittee can move to make their reports public if the ratifying nation refuses to address the Subcommittee’s recommendations.

#### **How many countries have ratified OPCAT?**

As of October 19, 2010, 74 countries have signed OPCAT, and 50 of them have ratified it.

#### **What is the U.S. position on OPCAT?**

In 2002, the U.S. was one of only four countries to vote against OPCAT in the UN General Assembly. Since its passage, the United States has neither signed nor ratified OPCAT.

#### **How can I get involved in NRCAT's efforts on OPCAT?**

Contact our regional affiliate, the Bay Area Religious Campaign Against Torture (BARCAT) for more information. (Email Louise Specht, BARCAT Convener: [louise@barcat.org](mailto:louise@barcat.org).)

### **What is the process for the United States to adopt OPCAT?**

The President must sign the treaty and submit it to the Senate for ratification. It takes 67 votes in the Senate to ratify a treaty.

### **Will the Senate ratify OPCAT?**

If President Obama signs OPCAT, it will probably take a long time for the Senate to ratify since 67 senators are not yet convinced of the importance of OPCAT. (President Reagan signed the Convention Against Torture in 1988, but the Senate didn't ratify it until 1994.) Persistent advocacy in favor of OPCAT is necessary to garner the 67 votes needed to ratify the treaty. Ratification is a long term goal—it will take people working to educate others in their community and policymakers to achieve it.

### **What can be done before ratification?**

Even without having ratified OPCAT, the U.S. can still develop mechanisms to prevent the torture of prisoners under its jurisdiction. It can also provide resources to countries that have ratified the treaty to assist them in developing and implementing National Preventative Mechanisms. Doing so may be an important way to educate U.S. policymakers about the benefits of OPCAT while helping to prevent torture in other countries.

### **What types of places of confinement does OPCAT allow access to?**

OPCAT allows international inspectors access to all places of confinement. These include jails, prisons, immigrant detention centers, psychiatric institutions, and any other facilities in which individuals are involuntarily detained.