



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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**SECOND ANNUAL REPORT OF THE SUBCOMMITTEE
ON PREVENTION OF TORTURE AND OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT***

(February 2008 to March 2009)

* The annexes to the present report are reproduced as received, in English only.

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I. INTRODUCTION

1. This public document is the second annual report of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT).¹ It gives an account of the work of the SPT during the period from the beginning of April 2008 to the end of March 2009.²

2. As at 31 March 2009, the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) had 46 States parties and 62 signatories.³ A number of other States are far advanced in the process of ratification and the SPT looks forward to the time when there will be fifty States parties and the number of SPT members will increase to 25.

3. The original membership of ten experts, elected by States parties as independent members of the SPT in October 2006, stayed the same following elections in October 2008 for the seats of the five members whose terms of office expired after two years.⁴ The members of this new generation of United Nations treaty bodies remain firmly committed to preventing torture and other cruel, inhuman or degrading treatment or punishment through the three pillars of the SPT mandate:

- Visits to places of deprivation of liberty
- Direct work with national preventive mechanisms
- Cooperation with other United Nations bodies, other international bodies at the global and regional levels, and national bodies working in related areas

4. Article 25 of the OPCAT states that the “expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations” and that 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.” During its second year the SPT has continued to struggle to fulfil the mandate due to factors seriously inhibiting its capacity to do so:

¹ Established following the entry into force in June 2006 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). For the text of the OPCAT, see www2.ohchr.org/english/law/cat-one.htm.

² In accordance with the OPCAT (art. 16, para. 3), the SPT presents its public annual reports to the Committee against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

³ A list of States parties to the OPCAT is contained in annex I.

⁴ A list of SPT members is contained in annex II.

- Budgetary resources limiting preventive visits to three or four per year, meaning that the SPT would visit a State party once every twelve to fifteen years
 - No budget provision at all for direct work with national preventive mechanisms, although this is the uniquely important new feature of the OPCAT
 - Lack of staff and lack of staff continuity to support this specialized work, resulting in the SPT working with twelve different individual staff members on the six visits carried out to date
5. The SPT regrets to have to report that, for as long as the current support situation remains unchanged, it will not be able to discharge its duties fully under the mandate.

II. MANDATE OF THE SUBCOMMITTEE ON PREVENTION OF TORTURE

A. Objectives of the Optional Protocol to the Convention against Torture

6. Article 1 of the OPCAT provides for a system of regular visits by mechanisms at the international and national level to prevent torture or other cruel, inhuman or degrading treatment or punishment. The SPT conceives this system as an interlocking network of mechanisms carrying out visits and other related functions under their preventive mandates in cooperation with each other. Good relations and communications between the visiting bodies working at different levels need to be developed and maintained in order to avoid duplication and to use scarce resources to best effect. The SPT has a mandate to engage directly with other visiting mechanisms, both at the international and national levels. During the reporting period it has continued to seek ways to promote synergy among those working in the field of prevention.

B. Key features of the mandate of the Subcommittee on Prevention of Torture

7. The mandate of the SPT is set out in the OPCAT in article 11.⁵ This establishes that the SPT shall:

- (a) Visit places where people are or may be deprived of liberty;
- (b) In regard to national preventive mechanisms (NPMs):
 - (i) Advise and assist States parties, when necessary, in their establishment;
 - (ii) Maintain direct contact with NPMs and offer them training and technical assistance; advise and assist NPMs in evaluating the needs and necessary means to improve safeguards against ill-treatment; and make necessary recommendations and observations to States parties with a view to strengthening the capacity and mandate of NPMs;

⁵ Part III “Mandate of the Subcommittee on Prevention”.

(c) Cooperate with relevant United Nations bodies as well as with international, regional and national bodies for the prevention of ill-treatment.

8. The SPT considers the three elements of its mandate as essential for the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

C. Powers of the Subcommittee on Prevention of Torture under the Optional Protocol

9. In order for the SPT to fulfil its mandate, it is granted considerable powers under the OPCAT (art. 14). Each State party is obliged to allow visits by the SPT to any places 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.⁶

10. States parties further undertake to grant the SPT unrestricted access to all information concerning persons deprived of their liberty and to all information referring to the treatment of those persons, as well as their conditions of detention.⁷ They are also obliged to grant the SPT private interviews with persons deprived of liberty without witnesses.⁸ The SPT has the liberty to choose the places it wishes to visit and the persons it wishes to interview.⁹ Similar powers are to be granted to NPMs, in accordance with the OPCAT.¹⁰

11. During the reporting period the SPT has continued to exercise these powers successfully with the cooperation of the States parties visited.

D. The preventive approach

12. The scope of the SPT's preventive mandate is large, encompassing many factors related to obtaining information on the situation in a country as regards the treatment or punishment of people deprived of their liberty. Such factors include: any relevant aspect of, or gaps in, primary or secondary legislation and rules or regulations in force; any relevant elements of, or gaps in, the institutional framework or official systems in place; and any relevant practices or behaviours which constitute or which, if left unchecked, could degenerate into, torture or other cruel, inhuman or degrading treatment or punishment. The SPT subjects to scrutiny any and all such factors which may conduce to torture or other cruel, inhuman or degrading treatment or punishment.

⁶ OPCAT, articles 4 and 12 (a).

⁷ Ibid., articles 12 (b) and 14, paragraph 1 (a) and (b).

⁸ Ibid., article 14, paragraph 1 (d).

⁹ Ibid., article 14, paragraph 1 (e).

¹⁰ Ibid., articles 19 and 20.

13. Whether or not torture or other cruel, inhuman or degrading treatment or punishment occurs in practice in a State, there is always a need for every State to be vigilant in order to guard against the risk of such occurrence and to put in place and maintain effective and comprehensive safeguards to protect people deprived of their liberty. It is the role of preventive mechanisms to ensure that such safeguards are actually in place and operating effectively and to make recommendations to improve the system of safeguards, both in law and in practice, and thereby the situation of people deprived of their liberty. The SPT's preventive approach is forward looking. In examining examples of both good and bad practice, the SPT seeks to build upon existing protections, to close the gap between theory and practice and to eliminate, or reduce to a minimum, the possibilities for torture and other cruel, inhuman or degrading treatment or punishment.

III. VISITING PLACES OF DEPRIVATION OF LIBERTY

A. Planning the work of the Subcommittee on Prevention of Torture in the field

14. During its second year of operation, the SPT continued to select the States to be visited by a reasoned process, with reference to the principles indicated in article 2 of the OPCAT. Among the factors that may be taken into consideration in the choice of countries to be visited by the SPT are date of ratification/development of NPMs, geographic distribution, size and complexity of State, regional preventive monitoring in operation, and specific or urgent issues reported.

15. The SPT has found it necessary to limit its planned programme of visits to three visits per year because of budgetary constraints. The SPT wishes to state categorically that it does not consider this periodicity of regular visits adequate to fulfil its mandate under the OPCAT.

16. In early 2008, it became apparent, when costings for the visits were provided, that there would be insufficient funding to support even the reduced programme of visits, i.e. two SPT visits in the second half of 2008. The SPT decided that, rather than undertake both planned visits in a superficial manner, it would proceed to carry out the first of the two scheduled visits with an allocation of time and human resources more appropriate to the work as planned. This inevitably led to the postponement of the remaining visit planned for 2008 until early 2009.

17. In the course of 2008, the SPT continued to develop its approach to the strategic planning of its visit programme in relation to the existing number of States parties. The SPT takes the view that, after the initial period of SPT development, the visits programme in the medium term should involve ten visits per twelve-month period. This annual rate of visits is based on the conclusion that, to visit the 46 States parties effectively in order to prevent ill-treatment, the SPT would have to visit each State party at least once every four/five years on average. In the SPT's view, less frequent visits could jeopardize effective support to and reinforcement of NPMs in the fulfilment of their role and the protection afforded to persons deprived of liberty.

18. Four additional ratifications or accessions will bring the total States parties to 50, with a concomitant requirement for an increase in budgetary resources and an increase in SPT

membership to 25.¹¹ With 62 signatories to the OPCAT and the process of ratification well underway in some cases, the SPT trusts that plans for provision for that contingency are in hand. To that end, the SPT has prepared for the OHCHR detailed justified budgetary calculations for its future work (see section VI below).

19. As part of the planning process, the SPT requests information from the State party to be visited concerning the legislation and institutional and system features related to deprivation of liberty, as well as statistical and other information concerning their operation in practice. The SPT is grateful to the two interns, each working for a six-month period, who prepared the country briefs concerning the States parties to be visited in the period covered by the present report. The country briefs contain a wealth of up-to-date, relevant information, presented in an analytical framework devised by the SPT and draw on materials from other United Nations bodies, other international treaty bodies, national human rights institutions, non-governmental organizations and individual communications.

B. Visits carried out from April 2008 through March 2009

20. The SPT carried out visits to Benin in May 2008, to Mexico in August/September 2008 and to Paraguay in March 2009. During these visits, the delegations focused on the development process of the national preventive mechanisms and on the situation as far as protection of people held in various types of places of deprivation of liberty is concerned.¹²

21. In early 2009, the SPT announced its forthcoming programme of work in the field for the year, including visits to Paraguay, Honduras and Cambodia and in-country engagement in Estonia. The SPT also carried out preliminary missions shortly before the planned regular visits to Mexico and Paraguay to initiate the process of dialogue with the authorities. The preliminary meetings proved to be an important part of preparation for the visits, representing an opportunity to fine-tune the programme and enhance facilitation of the work of the delegation. Preliminary missions form an integral part of the work involved in SPT visits.

22. During visits, SPT delegations have engaged in empirical fact-finding and discussions with a wide range of interlocutors, including officials of the ministries concerned with deprivation of liberty and with other government institutions, other State authorities such as judicial or prosecutorial authorities, relevant national human rights institutions, professional bodies and representatives of civil society. If the national preventive mechanisms are already in existence, they are important interlocutors for the SPT. SPT delegations have carried out unannounced visits to places of deprivation of liberty and have had interviews in private with persons deprived of their liberty. They also engaged in discussions with staff working in custodial settings and, in the case of the police, also with those working in the investigation process.

¹¹ In accordance with article 5, paragraph 1 of OPCAT.

¹² For details of the places visited, see annex III.

23. Among its principal methods for fact-finding on visits, the SPT uses the triangulation of information gathered independently from a variety of sources, including direct observation, interviews, medical examination and perusal of documentation, in order to arrive at a view of the particular situation under scrutiny as regards the risk of torture or other cruel in human or degrading treatment or punishment and as regards the presence or absence, strength or weakness of safeguards. SPT delegations draw conclusions on the basis of its cross-checked findings made during visits.

24. During the year the SPT noted with satisfaction that some States parties plan to or are in the process of implementing the Istanbul Protocol as a tool to document torture, first of all in the fight against impunity. The SPT has analysed the usefulness of the Istanbul Protocol, not only in the fight against impunity, but also in the prevention of torture and other cruel, inhuman or degrading treatment or punishment, and has identified some challenges. The analysis appears in annex VII. Considering the validity and usefulness of the Istanbul Protocol as a soft law instrument, the SPT is of the view that States should promote, disseminate and implement the Protocol as a legal instrument to document torture cases of people deprived of their liberty through medical and psychological reports drafted under adequate technical standards. These reports can not only constitute important evidence in torture cases but, most importantly, they can contribute to the prevention of cruel, inhuman and degrading treatment. The Subcommittee on Prevention of Torture notes that it is crucial that doctors and other health professionals be effectively independent from police and penitentiary institutions, both in their structure - human and financial resources - and function - appointment, promotion and remuneration.

25. At the end of each regular SPT visit, the delegation presented its preliminary observations to the authorities orally in a confidential final meeting. The SPT wishes to thank the authorities of Benin, Mexico and Paraguay for the spirit in which the initial observations of its delegations were received and the constructive discussions ensuing about ways forward. After each visit the SPT wrote to the authorities, reiterating key preliminary observations and requesting feedback and updated information on any steps taken or being planned since the visit to address the issues raised during the final meeting, in particular on certain issues which could be or were due to be addressed in the weeks following the visit. The SPT indicated that responses communicated by the authorities would be considered in the drafting of the visit report.

26. The authorities were also reminded, later in the period after the visit, that any responses received by the SPT before adoption of the draft visit report in plenary session would form part of the SPT's deliberations when considering adoption. These communications form an important part of the ongoing preventive dialogue between the State party and the SPT. The SPT is gratified to report that on each of the visits carried out to date, it has received feedback from authorities concerning the preliminary observations and further information prior to the adoption of each visit report. This is an indication that the States parties initially visited have embraced the ongoing process of dialogue and incremental progress on prevention.

27. The authorities are asked to respond in writing to the recommendations and to the requests for further information in the SPT's report on the visit to that State, as transmitted to them in confidence after adoption by the SPT. Thus far all the responses of the authorities concerned have arrived on time - a clear signal of the goodwill of States parties to cooperate with the SPT.

C. Publication of the visit reports of the Subcommittee on Prevention of Torture

28. As of 31 March 2009, the SPT visit reports on Sweden and the Maldives, (two out of the five States parties to have received an SPT visit report) and the authorities' responses are in the public domain.¹³ The SPT hopes that in due course the authorities of every State party visited will request that the visit report and the authorities' response to it be published.¹⁴ Until such time the visit reports remain confidential.

29. Publication of an SPT visit report and the response from the authorities concerned is a sign of the commitment of the State party to the objectives of the OPCAT. It enables civil society to consider the issues addressed in the report and to work with the authorities on implementation of the recommendations to improve the protection of people deprived of their liberty. The SPT warmly welcomes the decision to publish taken by the authorities of Sweden and the Maldives. The SPT hopes that other States parties will follow this excellent example.

D. Issues arising from the visits

30. The OPCAT provides that SPT members may be accompanied on visits by experts of demonstrated professional experience and knowledge to be selected from a roster prepared on the basis of proposals made by the States parties, the OHCHR and the United Nations Centre for International Crime Prevention.¹⁵ To date 22 States parties have provided names and details of experts for the roster. In 2008 the United Nations set up a panel to select names to be placed on the roster in addition to the experts proposed by States parties. External experts can contribute to the work of the SPT by providing a diversity of perspectives and professional expertise to complement those of SPT members. The SPT hopes that experts from all regions of the world will be included in the roster. The SPT still awaits the roster of experts and, in its absence, continues to select experts from the list of names proposed by States parties and from among experts widely recognized as having the required relevant expertise. During the period covered by the present report, the SPT was accompanied on one visit by only one expert, owing to budgetary constraints.

31. The SPT has concerns about the possibility of reprisals after its visits. People deprived of their liberty with whom the SPT delegation has spoken may be threatened if they do not reveal the content of these contacts or punished for having spoken with the delegation. In addition, the SPT has been made aware that some people deprived of their liberty may have been warned in advance not to say anything to the SPT delegation. It should be self-evident that conduct of this kind on the part of any official or person acting for the State would be a breach of the obligation to cooperate with the SPT as provided in the OPCAT. Moreover, article 15 of the OPCAT lays a positive obligation upon the State to take action to ensure that there are no reprisals as a consequence of an SPT visit.

¹³ See <http://www.ohchr.org/english/bodies/cat/opcat/index.htm>.

¹⁴ In accordance with article 16, paragraph 2 of OPCAT.

¹⁵ Article 13, paragraph 3.

32. The SPT expects the authorities of each State visited to verify whether reprisals for cooperating with the SPT have occurred and to take urgent action to protect all persons concerned.

IV. NATIONAL PREVENTIVE MECHANISMS

A. Work of the Subcommittee on Prevention of Torture related to national preventive mechanisms

33. The OPCAT requires each State party to 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 - national preventive mechanisms (NPMs).¹⁶ The Optional Protocol sets a time limit for this provision no later than one year from ratification. Most States parties have not met this obligation.

34. During its second year the SPT again made contact with all States parties who were due to establish or maintain NPMs in order to encourage them to communicate with the SPT about the ongoing process of developing NPMs. States parties to the OPCAT were requested to send detailed information concerning the establishment of NPMs (legal mandate, composition, size, expertise, financial resources at their disposal, frequency of visits, etc.).¹⁷ By 31 March 2009, 29 States parties had provided information on all or some of these matters.¹⁸

35. The SPT notes with concern the lack of progress to date towards the designation, establishment or maintenance of NPMs in many States parties. There are noticeable gaps as regards the required process of consultation for the establishment of NPMs, the necessary legislative foundation and the practical provision, including human and budgetary resources, to enable the NPMs to work effectively. Unless the NPMs are able to fulfil their role as the on-the-spot visiting mechanisms for the prevention of ill-treatment, the work of the SPT will be seriously and adversely affected.

36. During the course of the year, the SPT had various bilateral and multilateral contacts with NPMs and with organizations, including national human rights institutions (NHRIs) and non-governmental organizations (NGOs) involved in the development of NPMs in all the regions falling under the mandate. The SPT salutes the work of the member organizations of the OPCAT Contact Group (OCG),¹⁹ in partnership with regional bodies such as the African Commission on Human and People's Rights, the Council of Europe, the Inter-American Commission on Human

¹⁶ Article 17.

¹⁷ Having regard to the elements identified in articles 3, 4, 11, and 12 of OPCAT.

¹⁸ The official information communicated to the SPT concerning designation, establishment or maintenance of NPMs by all States parties as of 31 March 2009 is available in the SPT's website: <http://www.ohchr.org/english/bodies/cat/opcat/index.htm>.

¹⁹ The organizations involved in the OPCAT Contact Group are indicated in annex VI.

Rights and the OSCE/ODIHR and the Commission of the European Union in organizing gatherings around the world to promote and assist in the implementation of the OPCAT.

37. In response to requests from some NPMs for assistance, the SPT is in the process of exploring ways to develop a pilot programme for assistance to NPMs, based on a combination of workshops and observation of NPM visits in action, with subsequent feedback and exchange of views. The workshop model arose from a meeting with a representative of the Estonian NPM during the fifth SPT plenary session. It is being piloted in 2009, as part of a programme supported by the Council of Europe and organized by the Association for the Prevention of Torture (APT). The SPT is pursuing such avenues of support in order to fulfil its mandate under the OPCAT in the context of a continuing absence of any United Nations budgetary provision for this part of the SPT's work (see section VI below).

38. In the course of the visits during the reporting period, SPT delegations met with representatives of the bodies designated to act as NPMs in some of the countries visited. In Benin, the draft legislation on the NPM was examined and welcomed; the NPM was not yet in existence and the SPT awaits progress in this regard. In Mexico, the NPM was the subject of a series of discussions, including issues such as the legislation regarding the mandate and scope of the work programme in the context of the complex federal system and resources. In Paraguay, the SPT noted with appreciation that the process of development of the draft law establishing the NPM had been characterized by openness, transparency and inclusivity. Furthermore, the content of the draft law meets the minimum requirements of the OPCAT, including as to the functional independence of the NPM. The SPT is concerned that the draft law has for months been under consideration by the Senate's commission on legislation and trusts that the impetus for the adoption of the law will be renewed in the weeks following the SPT's visit.

39. Members of the SPT were also involved in a number of meetings²⁰ at the national, regional and international level, concerning the development of NPMs. The SPT members consider this part of their mandate so crucial that they have made every effort to be involved through self-funding and/or with generous support, including financial, from the OCG. This association of organizations involved in work related to the implementation of the OPCAT provided the SPT with significant help by sponsoring participation of SPT members in a range of important gatherings of key interlocutors and by assisting the SPT in its programme of developing working methods (see section V, below). The SPT wishes to place on record its gratitude for the continuing vital support of the OCG, in particular in relation to the SPT's work concerning NPMs.

B. Questions concerning national preventive mechanisms

40. During the early phase of the operation of the OPCAT, the SPT produced preliminary guidelines concerning the development of NPMs (published in the SPT's first annual report). These focused on the initial stage of the process, when States parties began to fulfil their obligation under the OPCAT to designate, establish or maintain NPMs. Many States parties are still at this initial stage in relation to the development of their NPMs.

²⁰ For a list of activities related to NPMs in which SPT members participated, see annex V.

41. The SPT has been turning its focus to key questions about the functioning of NPMs in order to inform its approach to implementing its tasks in relation to NPMs, starting from the framework in article 11 of the OPCAT: (a) advising and assisting States parties in establishing NPMs, (b) offering NPMs training and technical assistance with a view to strengthening their capacities, (c) advising and assisting NPMs in evaluating the needs and the means necessary to strengthen the protection of people deprived of their liberty and (d) making recommendations and observations to States parties with a view to strengthening the mandate and capacity of NPMs to prevent ill-treatment.

42. At this early stage of building confidence and developing relations, the SPT intends to proceed empirically, supporting NPMs and being constructively critical in its cooperation with NPMs, as with States parties. Through its work in “direct contact” with NPMs, as stipulated in the OPCAT, the SPT seeks to consider what NPMs need in order to improve their functioning in practice as a key part of an effective preventive visiting system. Under article 16, the SPT shall communicate its recommendations and observations confidentially to the State party and, if relevant, to the national preventive mechanisms. The SPT considers that most, if not all, of its recommendations and observations would be relevant to national preventive mechanisms. The SPT is keen to continue and intensify its direct contact with NPMs and looks forward to being in a position to devote more resources to this important part of its mandate (see section VI below).

V. COOPERATION WITH OTHER BODIES

A. Relations with relevant United Nations bodies

43. The OPCAT establishes a special relationship between the Committee against Torture (CAT) and the SPT and provides that both organs shall hold simultaneous sessions at least once a year.²¹ The sixth session of the SPT was held simultaneously with part of the forty-first session of CAT, and the second joint meeting took place on 18 November 2008. The discussion included the following issues: implementation of the OPCAT through ratifications; NPMs; country visits and their time-tabling; cooperation between CAT and the SPT and sharing of information between the two bodies; public annual reports of the SPT.

44. The CAT/SPT contact group, consisting of two members from each treaty body, continued to facilitate communications. The APT supported these contacts by providing funding for a meeting, including the chairpersons of the two treaty bodies, before the November joint meeting. This enabled the participants to exchange views on a number of issues of importance to both bodies, including ways of coordinated working. The SPT greatly appreciates the support of CAT in presenting the SPT public annual report to the General Assembly together with the CAT’s own annual report.

45. In November 2008 the General Assembly decided that the chairpersons of CAT and SPT would make presentations to the General Assembly in October 2009 concerning their work in relation to torture with interactive discussions. The SPT warmly welcomes this opportunity to engage with the General Assembly on matters relating to its mandate.

²¹ Article 10, paragraph 3 of OPCAT.

46. The Special Fund to provide assistance to States parties in implementing SPT recommendations and to assist the education of NPMs (under article 26 of the OPCAT) is being administered by the OHCHR. The SPT suggested that an independent board of experts should be involved in reviewing applications to the Special Fund. The SPT has always been firmly of the opinion that the SPT needs to maintain an arms length relationship with the Fund in order to distinguish its role as an independent preventive mechanism from the funding of implementation of its recommendations. It was therefore pleased to learn that the experts on the Board of Trustees of the Voluntary Fund for the Victims of Torture (VFVT) have been approached to act as an independent advisory board to assess how contributions to the Special Fund might be used.

47. The SPT understands that thus far there have been generous contributions to the Special Fund from the Maldives and Spain. It is reported that in general States have been reluctant to contribute to the Special Fund until they know what the SPT's recommendations are. The SPT recalls that its recommendations are confidential until the State party concerned agrees to publication of the visit report. Publication is therefore an important step in the process of obtaining funding for the implementation of recommendations.

48. During its plenary sessions, the SPT members discussed relations and attended meetings with other relevant United Nations bodies. In particular, given the complementarity of the SPT's work and that of the Special Rapporteur on the question of torture, the SPT has continued to maintain close contact with Mr Manfred Nowak and has discussed common challenges faced and methods of working.

49. During its seventh plenary session in February 2009, the SPT met with the Mr. Gianni Magazzeni from the Field Operations and Technical Cooperation Division of National Institutions Unit to discuss accreditation of the National Human Rights Institutions (NHRIs). Whereas the accreditation process is clearly seen as of value to by NHRIs, the SPT takes the view that it is important to distinguish between the general human rights mandate of NHRIs and the specific preventive mandate of NPMs. Accreditation does not automatically qualify an NHRI as an NPM. In the meeting, ways were explored to make clear the distinction between NHRIs accreditation and suitability of a particular NHRI for the role of NPM.

50. The SPT continues to be represented at the Inter Committee meetings of the United Nations human rights treaty bodies, which are a good opportunity to exchange views with experts whose mandates intersect substantively with the SPT mandate. There are points of common interest among the treaty bodies. The SPT's work relates in particular to the mandate of CAT and the Human Rights Committee, with respect to the rights of persons deprived of liberty, and likewise to the work of Committee on the Rights of the Child, which includes the rights of children deprived of liberty, and to that of the Committee for the Elimination of Discrimination against Women, as regards the rights of women deprived of liberty. The SPT has had occasion to cite the CAT, the Human Rights Committee and the Committee on the Rights of the Child in its visit reports.

B. Relations with other relevant international organizations

51. The SPT also maintained contact with the International Committee of the Red Cross and the two treaty bodies continued to maintain a positive dialogue on the many related areas of their work.

52. The OPCAT provides that the SPT shall consult with bodies established under regional conventions with a view to cooperating with them and avoiding duplication, in order to promote effectively the objectives of the OPCAT to prevent torture and other forms of ill-treatment.²²

53. During the reporting period, the SPT has maintained close contacts with the Inter American Commission on Human Rights (IACHR), with the two bodies working on guidelines for coordination. The Executive Secretary of the IACHR was invited to a working group meeting with the SPT in Geneva and one of the SPT members participated, on behalf of the SPT, in a public hearing and plenary session of the IACHR in Washington concerning prevention of torture in Latin America. These meetings proved fruitful opportunities for exchanges focused on the work of each body and current developments relating to national preventive mechanisms.

54. The SPT likewise continued to have close contact with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Members of the SPT met with the Bureau and Executive Secretary of the CPT in the context of each of the tri-annual plenary sessions of the CPT in Strasbourg. In addition, the Secretary to the SPT met with the Executive Secretary and other members of the CPT Secretariat in Strasbourg from 21 to 22 July 2008. These were important occasions on which to exchange ideas and information. The SPT and the CPT are planning to be involved in a series of training/capacity building activities in the field designed to assist in the development of NPMs. The programme is under the auspices of the Council of Europe and implemented by the APT.

55. The SPT and both regional international bodies are concerned to ensure that duplication of the programme of preventive work being carried out regionally is avoided and to optimize the impact of the system of preventive visiting in their common States parties.

56. The SPT also continued its close contacts with the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) at several regional meetings, as well as participating in seminars in Kyrgyzstan and Serbia in early 2009.

C. Relations with civil society

57. During the reporting period, the SPT worked in close contact with international and national non-governmental organizations²³ engaged in strengthening the protection of all persons against torture.

58. The SPT has had regular meetings with APT in Geneva. This international NGO has been a constant source of support and advice to the SPT, both during the SPT plenary sessions and over the whole of the period covered by the annual report. The SPT is particularly grateful to the APT for providing support, including much needed funding, to enable the SPT to develop better relations with other treaty bodies, NPMs and NGOs. The SPT would not otherwise have been

²² Articles 11 (c) and 31.

²³ In accordance with article 11 (c) of OPCAT.

able to take these activities forwards. The SPT has continued to use the valuable materials and information produced by the APT, in the context of the preparation for visits and for interaction with NPMs.

59. The SPT has remained in close contact with Bristol University's OPCAT Project and has exchanged ideas and views on a number of issues central to the SPT's work. The project team has been involved in organizing regional activities and has provided a critical external academic perspective concerning aspects of the SPT's work, for which the SPT is very grateful.

60. The OPCAT Contact Group (OCG) has continued to assist, advise and support the SPT, including financially, in particular by making it possible for SPT members to participate in important meetings related to the OPCAT (see paragraph 39 above and annex V below). The SPT meets with the OCG during each of its plenary sessions. This provides an important formal opportunity for the sharing of information and ideas, in addition to the many informal contacts and communications with organizations in the group. The SPT appreciates the support and interest of the OCG, which has contributed substantially to its development of working methods and to the work of the SPT in relation to NPMs.

61. The SPT notes with appreciation the continuing contribution made by civil society both to promoting ratification of, or accession to, the OPCAT, and to the implementation process.

VI. ADMINISTRATIVE AND BUDGETARY MATTERS

A. Resources in 2008/2009

62. Article 25 of the OPCAT states that the "expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations" and that 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".

63. Since the SPT began its work in 2007, it remains the case that no United Nations funding has been provided for the SPT to carry out its mandate in relation to NPMs and no funding is foreseen for this work for the period up to the end of 2009. Over the first three crucial years of the SPT's activities, United Nations support for SPT work with NPMs will have been restricted to contact in Geneva during the three one-week plenary sessions or during an SPT visit. With funding only available for nine visits in the period from SPT inception until the end of 2009, the SPT will have visited less than one fifth of the States parties and their NPMs in these first three years. The SPT has tried to find creative options to support its vital work in this area and has made detailed proposals, with justifications, for a revision of the original budget assumptions for the biennium 2010-2011 (see part C below).

B. Secretariat of the Subcommittee on Prevention of Torture

64. In May 2008 the SPT welcomed the arrival of its first Secretary, Mr Patrice Gillibert, after a series of acting secretaries over the course of the first fifteen months of operations. The Secretary to the SPT has already proved a great asset, through participation in the three visits carried out following his arrival in post and by virtue of his efforts to improve the organization

and support available to the SPT. The SPT also welcomed a new administrative assistant, who has very efficiently and patiently helped the SPT in a wide range of organizational matters.

65. The SPT wishes to place on record its deep gratitude to Ms Kukka Savolainen, the seconded member of staff who worked with the SPT within the OHCHR until March 2009. She has provided the main continuity of staffing since April 2007 and her contribution to the drafting of plenary and visit reports has been invaluable. Her support of the SPT has demonstrated the value of continuity, skill and experience in the special elements of the SPT's work.

66. On the six SPT visits carried out to date, the SPT has worked with a total of 12 different members of the OHCHR staff. Whereas the SPT is grateful to the individuals concerned for their efforts to provide assistance, it is strongly of the opinion that having new staff with no experience of, or training for, SPT visits on each new visit places the staff members concerned at a distinct disadvantage and under considerable stress. SPT visits to places where people are deprived of their liberty require specific expertise and empirical skills; they are by their very nature liable to include difficult situations which can involve risks to those not familiar with the work. It is not conducive to effective preventive visiting to have new staff members on every visit, however dedicated the individuals may be. This is not the mark of a professional approach to supporting the SPT on visits.

67. During 2008 the SPT experienced significant problems with the process of drafting the second visit report owing to the fact that none of the staff who went on that visit continued to work with the SPT after the visit or were available to assist in the drafting process. The result was that the draft report on the visit to the Maldives, carried out in December 2007, was not ready for plenary consideration until November 2008.

68. The SPT trusts that in future it will be possible for the SPT to benefit from the support of staff members who have past experience of SPT visits and who have shown themselves suited to this specific kind of work in the field. To that end, the SPT looks forward to the provision of a targeted SPT Secretariat. The SPT has been proposing, since its inception a core team of four suitably trained and experienced staff members agreed at the meeting in April 2007 with the then High Commissioner.²⁴ A core team would provide the possibility for a degree of continuity of staff involvement in visits as well as in the processes of planning visits and drafting of reports. At the SPT's inception the number of States parties was considerably less than at present and the number continues to rise rapidly. Staff provision should be reviewed as the number of States parties increases.

C. Budgetary requirements

69. The SPT has been engaged in discussions with the department of the OHCHR responsible for budget and staffing with a view to obtaining a budget capable of supporting the mandate of the SPT in accordance with the requirements of the OPCAT. The SPT is grateful for the provision by members of the department of information relating to costing of SPT visits, which has enabled the SPT to form a clearer picture of the lacunae.

²⁴ 2 P-4, 2 P-3 posts, in addition to one GS post.

70. The SPT considers it essential to revise the original, inappropriate assumptions on which its original budget was based, assumptions which, as the first annual report pointed out, allowed, with certain key omissions, for only four regular visits, lasting ten days each per year and two short follow-up visits of three days each.²⁵ On this basis the SPT would be able to carry out a regular visit to each of the existing 46 State parties once every 12 years.

71. The OPCAT provides for a minimum of two SPT members on a visit. In the original budget assumptions, that minimum had become the maximum; the original budget assumed visits involving only two SPT members, two Secretariat staff members and two external experts. Based on SPT members' experience and expertise in preventive visiting, the revised SPT proposals are based on the assumption that an average visit would require four SPT members. Two external experts and two Secretariat staff members would, however, be appropriate for most visits.

72. In the summer of 2008, after the SPT had carried out four visits, the United Nations decided that the SPT must be accompanied on all visits by a United Nations security officer and that the cost of this staff member must be met out of the SPT's budget. The SPT understands the need to consider the security situation during its field work. SPT members are not covered by United Nations insurance when carrying out visits, but, before commencing visits, gained advanced level United Nations security certificates. The SPT notes that certain international preventive mechanisms operating on a regional basis, notably the CPT, carry out visits without a security officer. The SPT is of the view that the need for a security officer should be assessed on a case-by-case basis, with due regard to the risks involved and to the budgetary implications. The SPT proposes that this additional cost, not reflected in the assumptions on which the budget for SPT visits was based, be included in all future budgetary provisions.

73. The SPT's revised proposals also include provision for interpretation on visits, another element missing in the original budget assumptions. It is axiomatic that interpretation is a necessary part of visits to places where people are deprived of their liberty and a major cost factor. The original assumptions in the budget significantly underestimated the actual cost of an SPT visit and would, at best, only apply for a small country without such complicating factors as a federal system or a large custodial population, to name but two factors.

74. The revised proposals address a matter of particular concern to the SPT - the previous lack of specific provision within the regular budget for the SPT's mandate to work in direct contact with NPMs. In the crucial early phase of the development of NPMs, during which every State party is obliged to designate/establish and/or maintain national preventive mechanisms, the SPT must have the capacity to work with the NPMs. The SPT continues to receive requests to take part in and to provide assistance for activities relating to the development of the NPMs. Such activities have hitherto not been approved for funding by the United Nations. The SPT has endeavoured, as far as possible, to respond positively to such requests with generous support

²⁵ As the SPT is far from visiting most States parties even for the first time, follow-up visits are not a priority at this stage.

from outside sources, in particular member organizations of the OCG. The SPT regards this work as integral to its mandate and notes that this is reflected in the *Annual Report* of the OHCHR, which refers to the SPT's work in supporting NPMs.²⁶

D. Proposals for change

75. In the light of the above considerations, the SPT has continued to struggle to carry out its work with an inadequate budget based on faulty assumptions about the nature and content of the SPT mandate. The SPT consequently considers that it is not yet in a position to fulfil its mandate. For that reason it has put forward detailed plans and proposals, with elaborated reasons for its future programme of work and for the associated budget requirements for the biennium 2010-2011.

76. As the SPT sees it, there is a stark choice to be made. Either lip service is paid to the idea of a system of visits by preventive bodies or a major injection of funds is required. Prevention of torture and other cruel, inhuman or degrading treatment or punishment is not cost neutral.

VII. ORGANIZATIONAL ACTIVITIES

A. Plenary sessions of the Subcommittee on Prevention of Torture

77. Over the course of the twelve months covered by the present report, the SPT held three one-week sessions, from 23 to 28 June 2008; from 17 to 21 November 2008 and from 8 to 14 February 2009 respectively. These sessions were devoted to planning visits, meeting with representatives of State parties to be visited, and adopting visit reports. Considerable attention was given to strategic planning and selection of countries for future visits.

78. The sessions also involved examination and discussion of information relating to States parties and NPMs and delegation planning for field activities, as well as meetings with representatives of bodies within the United Nations and from other organizations active in the field of prevention of ill-treatment, and refinement of a series of materials designed to provide basic information about the SPT.

B. Development of working methods

79. The SPT considers the development of working methods as an essential part of its ongoing activities. However, the continuing pressure of work has meant that the five days of the three plenary sessions per year afford insufficient time for the proper discussion of policy issues arising during the course of the SPT's work and consideration of evolving working methods. The SPT members and Secretariat staff members have devoted time on Saturdays following the plenary to this vital element of ongoing development. The SPT has been supported in the process of developing its working methods by the work of the member organizations of the OCG, as well as by the practical support of the APT, for which the SPT is most grateful.

²⁶ OHCHR Annual Report 2007, p. 21.

80. The SPT continued to work on refining the guidelines on visits, as part of the process of refining its working methods. SPT visits vary according to, inter alia, the complexity of the structures existing within a State party (e.g. federal states, devolved responsibilities for deprivation of liberty) and the size of the population in different kinds of custodial settings. Working methods on visits are constantly evolving and depend upon ongoing debriefing and feedback from visits.

C. Confidentiality and secure communications

81. Progress was made in achieving a system of secure communications in order to facilitate the safe discussion and exchange of data relating to confidential matters falling within the SPT's mandate. Such a system was essential given the need to protect persons providing information to the SPT and personal data obtained by the SPT, which could place individuals at serious risk, as well as to comply with the obligation to keep confidential all information and observations regarding a State party which has been visited. In 2008, staff of the OHCHR worked on the process of providing SPT members with access to a secure internet facility, GROOVE, which has the capacity to allow document review and discussion in strict confidentiality. This provision was fully realized in early 2009 and has greatly facilitated the work of drafting and reviewing documents and enhanced the efficiency of the SPT. The SPT is grateful that it is now able to exchange information under conditions of confidentiality commensurate with the nature of its work.

Annex I

**STATES PARTIES TO THE OPTIONAL PROTOCOL
TO THE CONVENTION AGAINST TORTURE AS OF
31 MARCH 2009**

Participant	Signature, Succession to signature (d)	Ratification, Accession (a), Succession (d)
Albania		1 Oct. 2003 (a)
Argentina	30 April 2003	15 Nov. 2004
Armenia		14 Sept. 2006 (a)
Austria	25 Sept. 2003	
Azerbaijan	15 Sept. 2005	28 Jan. 2009
Belgium	24 Oct. 2005	
Benin	24 Feb. 2005	20 Sept. 2006
Bolivia	22 May 2006	23 May 2006
Bosnia and Herzegovina	7 Dec. 2007	24 Oct. 2008
Brazil	13 Oct. 2003	12 Jan. 2007
Burkina Faso	21 Sept. 2005	
Cambodia	14 Sept. 2005	30 March 2007
Chile	6 June 2005	12 Dec. 2008
The Congo	29 Sept. 2008	
Costa Rica	4 Feb. 2003	1 Dec. 2005
Croatia	23 Sept. 2003	25 April 2005
Cyprus	26 July 2004	
Czech Republic	13 Sept. 2004	10 July 2006
Denmark	26 June 2003	25 June 2004
Ecuador	24 May 2007	
Estonia	21 Sept. 2004	18 Dec. 2006
Finland	23 Sept. 2003	
France	16 Sept. 2005	11 Nov. 2008
Gabon	15 Dec. 2004	
Georgia		9 Aug. 2005 (a)
Germany	20 Sept. 2006	4 Dec. 2008
Ghana	6 Nov. 2006	
Guatemala	25 Sept. 2003	9 June 2008
Guinea	16 Sept. 2005	
Honduras	8 Dec. 2004	23 May 2006
Iceland	24 Sept. 2003	
Ireland	2 Oct. 2007	
Italy	20 Aug. 2003	
Kazakhstan	25 Sept. 2007	22 Oct. 2008
Kyrgyzstan		29 Dec. 2008
Lebanon		22 Dec. 2008 (a)
Liberia		22 Sept. 2004 (a)
Liechtenstein	24 June 2005	3 Nov. 2006
Luxembourg	13 Jan. 2005	

Participant	Signature, Succession to signature (d)	Ratification, Accession (a), Succession (d)
Madagascar	24 Sept. 2003	
Maldives	14 Sept. 2005	15 Feb. 2006
Mali	19 Jan. 2004	12 May 2005
Malta	24 Sept. 2003	24 Sept. 2003
Mauritius		21 June 2005 (a)
Mexico	23 Sept. 2003	11 April 2005
Moldova	16 Sept. 2005	24 July 2006
Montenegro	23 Oct. 2006 (d)	6 March 2009
Netherlands	3 June 2005	
New Zealand	23 Sept. 2003	14 March 2007
Nicaragua	14 March 2007	25 Feb. 2009
Norway	24 Sept. 2003	
Paraguay	22 Sept. 2004	2 Dec. 2005
Peru		14 Sept. 2006 (a)
Poland	5 April 2004	14 Sept. 2005
Portugal	15 Feb. 2006	
Romania	24 Sept. 2003	
Senegal	4 Feb. 2003	18 Oct. 2006
Serbia	25 Sept. 2003	26 Sept. 2006
Sierra Leone	26 Sept. 2003	
Slovenia		23 Jan. 2007 (a)
South Africa	20 Sept. 2006	
Spain	13 April 2005	4 April 2006
Sweden	26 June 2003	14 Sept. 2005
Switzerland	25 June 2004	
The former Yugoslav Republic of Macedonia	1 Sept. 2006	13 Feb. 2009
Timor-Leste	16 Sept. 2005	
Togo	15 Sept. 2005	
Turkey	14 Sept. 2005	
Ukraine	23 Sept. 2005	19 Sept. 2006
United Kingdom of Great Britain and Northern Ireland	26 June 2003	10 Dec. 2003
Uruguay	12 Jan. 2004	8 Dec. 2005

Note: The 46 States parties do not include the 62 States having achieved signature or succession to signature, but not having achieved ratification of, or accession or succession to, the OPCAT.

Annex II

**MEMBERS OF THE SUBCOMMITTEE ON PREVENTION
OF TORTURE**

	Expiration of Term
• Ms. Silvia Casale	December 2012
• Mr. Mario Luis Coriolano	December 2012
• Ms. Marija Definis Gojanović	December 2010
• Mr. Zdenek Hajek	December 2012
• Mr. Zbigniew Lasocik	December 2012
• Mr. Hans Draminsky Petersen	December 2010
• Mr. Victor Manuel Rodriguez-Rescia	December 2012
• Mr. Miguel Sarre Iguiniz	December 2010
• Mr. Wilder Tayler Souto	December 2010
• Mr. Leopoldo Torres Boursault	December 2010

Mr. Rodriguez-Rescia is the current President of the SPT, with Messrs Coroliano and Petersen as Vice Presidents, as from February 2009. From February 2007 to February 2009, Ms Casale was President of the SPT, with Messrs Petersen and Rodriguez-Rescia as Vice Presidents.

Annex III

VISITS CARRIED OUT IN 2008-2009

1. First periodic visit to Benin: 17-26 May 2008

Places of deprivation of liberty visited by the delegation:

Police facilities

(a) Police stations

Commissariat Central de Cotonou

Commissariat Central de Porto-Novo

Commissariat de police de Dantokpa

Commissariat de police de Dodji

Commissariat d'arrondissement de Ouando

(b) Gendarmeries

Compagnie de Gendarmerie de Cotonou - Brigade Territoriale de Godomey

Brigade de Gendarmerie de Zogbodomey

Brigade Territoriale et de Recherches de Porto-Novo

Brigade Territoriale et de Recherches de Bohicon

Brigade de Gendarmerie de Séhoué

Prisons

Prison civile de Cotonou

Prison civile d'Akpro-Misséréte

Prison civile d'Abomey

Other institutions

Palais de Justice d'Abomey

2. First periodic visit to Mexico: 27 August-12 September 2008

Places of deprivation of liberty visited by the delegation:

Police facilities

In the Federal District:

National Federal Preventive Custody Unit
Federal Agency for Holding Cells (Calle Liverpool)
Agency No. 50

In Jalisco:

Ministry of Public Security, holding cells
Preventive-custody unit, 2750 Avenida Cruz del Sur
Office of the State Attorney-General (Calle 14)
Principal holding unit, Municipal Police

In Nuevo León:

State Investigation Agency, Office of the Attorney-General (“Gonzalito”)
Alamey Municipal Police

In Oaxaca:

Municipal Preventive Police
Office of the Attorney-General, holding cells
Elite Police Force (preventive custody)

Prisons

In the Federal District:

Oriente prison

In Mexico State:

Molino Flores Prevention and Social Rehabilitation Centre

In Jalisco:

Prevention and Rehabilitation Centre for Women
State of Jalisco Pretrial Detention Centre, Puente Grande
Puente Grande Social Rehabilitation Centre

In Oaxaca:

Santa María Ixcotel prison
Valles Centrales regional prison

Military establishments

Military prison No. 1, Federal District

Juvenile centre

Monterrey Secure Unit for the Rehabilitation of Juvenile Offenders
Department for the Enforcement of Measures for Juveniles,
Oaxaca Guardianship Council

Psychiatric facilities, with a focus on conditions

In Oaxaca

Annex to Zimatlán prison
Cruz del Sur psychiatric hospital

3. First periodic visit to Paraguay: 10-16 March 2009

Places of deprivation of liberty visited by the delegation:

Police facilities

Jefatura de Policía Metropolitana (Asunción):

Comisaría 3°

Comisaría 5°

Comisaría 9°

Comisaría 12°

Comisaría 20°

Comisaría de Mujeres

Jefatura de Policía Central:

Comisaría 1° de San Lorenzo

Comisaría 9° de Limpio

Jefatura de Policía Amambay:

Comisaría 3° de Barrio Obrero, Pedro Juan Caballero

Jefatura de Policía San Pedro:

Comisaría 8° de San Estanislao

Agrupación Especializada de la Policía Nacional

Prisons

Penitenciaría Nacional de Tacumbú

Penitenciaría Regional de Pedro Juan Caballero

Psychiatric facilities

Hospital Neuropsiquiátrico

Annex IV

**PROGRAMME OF THE WORK OF THE SUBCOMMITTEE
ON PREVENTION OF TORTURE IN THE FIELD FOR 2009**

- | | |
|--|-----------------------|
| Visit to Paraguay: | (first half of 2009) |
| Visit to Honduras: | (second half of 2009) |
| Visit to Cambodia: | (second half of 2009) |
| In-country engagement in Estonia: | (during 2009) |

Annex V

PARTICIPATION OF THE MEMBERS OF THE SUBCOMMITTEE ON PREVENTION OF TORTURE IN OPTIONAL PROTOCOL-RELATED ACTIVITIES

Africa

Southern African Region

Regional Conference on the OPCAT, organized by the Bristol University OPCAT Project with APT, FIACAT, the African Commission on Human and People's Rights. Cape Town, April 2008. (Silvia Casale, Zdenek Hajek, and Victor Rodriguez Rescia).

Americas

Central American Region

Regional Central American workshop on strategies and challenges of the ratification and implementation of the OPCAT. Tegucigalpa, Honduras, October 2008. (Hans Draminsky Petersen, Victor Rodriguez Rescia and Mario Coriolano).

International seminar on "The OPCAT and Federal States: Challenges and possible Solutions", organized by the APT, CEJIL, la Secretaria de Derechos Humanos, Ministerio de Justicia, Seguridad y Derechos Humanos, Presidencia de la Nación, el Ministerio de Relaciones Exteriores, Comercio Internacional y Culto, Presidencia de la Nación. Buenos Aires, September 2008. (Mario Coriolano, Miguel Sarre Iguinez and Patrice Gillibert, SPT Secretary).

Middle East and North Africa

Morocco

Regional conference on OPCAT, organized by the APT. February, 2009. (Silvia Casale).

Asia-Pacific

Cambodia

Workshop on OPCAT, organized by RCT. January, 2009. (Hans Draminsky Petersen).

Europe

OSCE region

OSCE seminar on monitoring. Ankara, May 2008. (Marija Definis Gojanovic and Zdenek Hajek).

Human Dimension Meeting on prevention of torture, death penalty and combating terrorism, organized by the OSCE/ODIHR. Warsaw, October 2008. (Zbigniew Lasocik).

OPCAT in the OSCE region: What it means and how to make it work. Regional conference organized by the Bristol OPCAT Project with the OSCE/ODIHR. Prague, November 2008. (Silvia Casale, Zdenek Hajek).

Kyrgyz Republic Civil Society Seminar organized by the European Union. Bishkek, Kyrgyz Republic, March 2009. (Zdenek Hajek).

Ireland

Roundtable meeting on the establishment of an NPM, organized by the Irish Human Rights Commission. Dublin, May 2008. (Hans Draminsky Petersen).

Poland

Lecture on prevention of torture for lawyers, organized by Helsinki Foundation for Human Rights. Poland, October 2008. (Zbigniew Lasocik).

Republic of Moldova

Workshop for the Moldovan NPM, organized by the APT under the auspices of the Council of Europe. Chisinau, January 2009. (Zbigniew Lasocik).

Serbia

Seminar on prevention of torture in Serbia, organized by the Protector of Citizens of Serbia, the Council of Europe and the OSCE Mission for Serbia. Belgrade. March, 2009. (Marija Definis Gojanovic).

Spain

Inaugural Conference on Implementation of the National Preventive Mechanism. Barcelona, March 2009. (Silvia Casale).

Annex VI

OPTIONAL PROTOCOL CONTACT GROUP

Amnesty International (AI)

Association for the Prevention of Torture (APT)

Action by Christians for the Abolition of Torture (FIACAT)

Bristol University OPCAT project

Mental Disability Advocacy Centre (MDAC)

Penal Reform International (PRI)

Rehabilitation and Research Centre for Torture Victims (RCT)

World Organization against Torture (OMCT)

Annex VII

ANALYSIS OF THE ISTANBUL PROTOCOL

Introduction

1. The Istanbul Protocol is a United Nations manual on medical and psychological documentation of torture and other cruel, inhuman and degrading treatment or punishment and its application in the process of investigation and legal proceedings in the context of the struggle against impunity and the prevention of torture and ill-treatment. The following presentation proceeds from the medical perspective.
2. Considering the validity and usefulness of the Istanbul Protocol as a soft law instrument, the SPT is of the view that States should promote, disseminate and implement the Protocol as a legal instrument to document torture cases of people deprived of their liberty through medical and psychological reports drafted under adequate technical standards. These reports can not only constitute important evidence in torture cases but, most importantly, they can contribute to the prevention of cruel, inhuman and degrading treatment. The Subcommittee on Prevention of Torture notes that it is crucial that doctors and other health professionals be effectively independent from police and penitentiary institutions, both in their structure - human and financial resources - and function - appointment, promotion and remuneration.
3. The SPT is of the opinion that since the Istanbul Protocol is a United Nations document, the provisions in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment must be a minimum standard for the definition of torture. Article 1 of the Convention states that “torture means any act by which severe pain or suffering, whether physical or mental, is inflicted intentionally ...”.
4. Thus, extension of the definition by e.g. adding that the victim’s life or function of vital organs must have been endangered is inappropriate.
5. The Istanbul Protocol gives detailed guidance for medical/psychological professionals for the best standard of the examination of a person who alleges to have been tortured or ill-treated.
6. The basic principle in the appraisal of the veracity of allegations of torture and ill-treatment is to inquire into:
 - (a) The medical history and the history of torture;
 - (b) The subjective state of health/presence of symptoms during torture and in the ensuing period of time; and
 - (c) Perform a profound medical and psychological examination, and if necessary refer the person to specialised examinations like various kinds of scans;
 - (d) In conclusion, the degree of concordance/agreement between those elements is determined.

7. The result of the medical/psychological examination can be graduated from, e.g.: exposure to torture beyond any reasonable doubt; high level of agreement; or partial agreement between the various categories of information - with or without objective signs of pathologies (physical and or mental); to disagreement.

8. However, a number of reservations should be taken into consideration, e.g., impaired memory of the victim and psychological inhibitions, ailments that are prevalent in many victims of torture.

9. The SPT notes that with the methods of torture normally used in times of peace, physical marks are most often unspecific or even absent. The presence, the nature and degree of severity of physical and psychological symptoms/illness after torture vary, depending not only on the nature of the torture, but also, e.g. on the physical and psychological constitution and background of the victim and the existence of co-morbidity.

10. Thus, the SPT is of the opinion that often existence of torture can neither be proved nor disproved through a medical/psychological examination carried out according to the Istanbul Protocol.

Contextualization of the Istanbul Protocol

11. In the fight against impunity the Istanbul Protocol is a useful tool in the appraisal of allegations of torture. The result of the medical/psychological examination is a piece of evidence together with other evidence.

12. The examination can never identify the torturers. This would rely on other evidence.

13. In a court case the judge may decide that the whole of the evidence is not sufficient to convict implicated officers.

14. The SPT notes that acquittal of an implicated officer does not necessarily mean that the statements of torture were false, but only that the whole of the evidence was not strong enough to lead to conviction. The decision of the judge is based on the sum of evidence on two levels:

- Whether torture had happened
- Whether the evidence was strong enough to convict particular persons

15. The SPT finds it necessary that judges, lawyers and public prosecutors who deal with cases of possible torture have basic knowledge of the principles of the Istanbul Protocol so that they can assess compliance of the examination with the principles of the Protocol and understand the conclusion of the medical/psychological examination and the basis for it.

16. However, the final conclusion of the examination should only be contested by medical/psychological experts with reference to objective deficiencies and errors.

17. Unless the medical/psychological experts conclude that there were gross disagreements between the various pieces of information, which could not be ascribed to e.g. the mental state of

health of the complainant, a court acquittal of accused officers should never be taken as an indication that the allegations were false, only that the evidence was not sufficient to lead to conviction.

18. In the prevention of torture the Istanbul Protocol can be an important tool provided that it is contextualized to the daily activities of doctors working in places of risk, first of all those doctors who work in institutions where detainees are held during the first phase of the criminal investigation.

19. The United Nations Principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment of 1988 states that “a proper medical examination shall be offered to a detainee or imprisoned person as promptly as possible after his admission to the place of detention”.

20. In many countries this principle is implemented. This routine medical examination should:

- Be carried out according to a format
- The format should include all the items below and should be filled in by the doctor with the consent of the detainee
- A medical history
- Allegations of exposure to recent violence and ill-treatment by the police or other persons
- A description of present health/subjective symptoms at the time of examination; and
- A thorough medical examination with an inspection of the whole surface of the body
- On the basis of this the doctor should assess whether alleged torture/severe ill-treatment could have happened

21. In the examination and the assessment of the possibility of exposure to torture/severe ill-treatment the medical doctor should have a proactive attitude.

22. The medical doctor working in police and detention facilities has a key role and should have training in the principles of documenting and reporting torture and ill-treatment.

23. There should be clear lines of command on when, how and to whom he should report cases of alleged torture and ill-treatment. The first step in the doctor's reporting should be to send a copy of the report to his superior - with the consent of the detainee.

24. If no consent from the detainee exists, the doctor should take out any information that could identify the detainee and report to a central register, cited below.

25. The superior should decide - together with the general prosecutor - whether there are grounds for a disciplinary inquiry or a criminal investigation by independent bodies.

26. The superior should report the case and the decision to inquire or investigate to the ministry responsible for the police and to the central register.
27. Not only in cases of allegations of torture, but also in cases where the detainee have remarkable lesions or a high number of lesions without allegations of torture/ill-treatment, the doctor should note the detainee's account of their origin in the medical file and send a copy of the medical file to his superior.
28. Such reports should be compiled in the data base below and classified as a case of violence of other than torture or of uncertain origin.
29. In all cases where the doctor assesses that torture or severe ill-treatment *could have* happened, the detainee should be offered a thorough medical/psychological examination by trained experts according to the Istanbul Protocol to take place within a time limit that permits the experts to assess superficial physical lesions possibly caused by torture/severe ill-treatment, i.e. within a week.
30. The SPT is of the opinion that all allegations of torture and severe ill-treatment, and cases of multi-traumatization of uncertain origin cited above, should be registered in a data base with information about - among other items:
- Hour date and place of alleged ill-treatment
 - The security body implicated and if possible characteristics of involved officers
 - Place of apprehension and detention
 - Nature of the allegations
 - Most important findings and the conclusion of the medical examination by the doctor in the police facility
 - Most important findings and the conclusion of the expert medical/psychological examination
 - Details of an inquiry and the result hereof
31. The SPT is of the opinion that a proactive compliance with such a programme by doctors in police and detention facilities would have a considerable impact on preventing torture. The proactive attitude to examining cases of possible torture and ill-treatment should be made known to all police officers and the implementation would deter many officers from resorting to torture and ill-treatment.
32. A database as outlined would be a useful tool for the authorities to analyse the problem of torture including identifying risk factors, in order to better prevent torture and ill-treatment.

Final remarks

33. The SPT underlines that the number of complaints of torture is not a reliable indicator of the real prevalence of the problem. Complicated complaint procedures and risk of reprisals may diminish the number drastically.

34. The SPT notes that one of the objectives of torture is to break down the victim, e.g. to make him confess to a crime or to give information. It follows that most victims of torture do not have the necessary mental strength to enter into bureaucratic technicalities and lengthy procedures with interviews lasting several days. It also follows that the doctor working in police facilities apart from being proactive should always - on an informed basis - respect a possible victim of torture's wish not to be referred to expert examination and an eventual wish to have information for the database sent in a manner that cannot identify the detainee directly.

35. In police custody a complainant should be safeguarded against direct reprisals from implicated officers through the maintenance of medical confidentiality.

36. In the system of justice the complainant should be safeguarded against reprisals, e.g. charges with defamation of authorities in case the medical/psychological examination fails to positively demonstrate exposure to torture beyond "any reasonable doubt" (see classification above).
