



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

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**Fourth annual report of the Subcommittee on  
Prevention of Torture and Other Cruel, Inhuman  
or Degrading Treatment or Punishment**

[April–December 2010]

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## I. Introduction

1. The fourth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is rather different from its predecessors.<sup>1</sup> The Subcommittee has received much useful feedback on its previous annual reports, in the light of which the Subcommittee has decided to use the present, and future, reports not only to record its activities, but also to reflect thereon. It is hoped that these reflections will prove a useful source of guidance for those interested in the work of the Subcommittee and will contribute to furthering knowledge of the approaches taken by the Subcommittee to the fulfilment of its mandate.

2. Following the introduction (chapter I), to that end, the report is divided into six sections. The chapter II provides a factual summary of key developments and activities concerning the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment during the reporting period. It should be read in conjunction with the annexes, which provide further and fuller factual information, and the Subcommittee's website ([www2.ohchr.org/english/bodies/cat/opcat/](http://www2.ohchr.org/english/bodies/cat/opcat/)), where the most recent developments are recorded. Chapter III complements the first by providing a factual record of the Subcommittee's engagement with other bodies in the field of torture prevention.

3. Chapter IV breaks new ground by referring to a number of substantive developments and issues that have arisen during the reporting year. Some of these relate to practical and organizational matters, others to common concerns arising from its country visits and engagements with national preventive mechanisms (NPMs), seminars and other forms of discussions in which the Subcommittee has been involved. This section is not intended to provide an exhaustive coverage of issues of interest or concern, nor is it intended to address the issues raised in a comprehensive fashion. Rather, it is intended to draw attention to issues which the Subcommittee has encountered and upon which it is reflecting.

4. This is followed by chapter V, another new section, entitled "Substantive issues". Whereas the previous section flagged issues which were of interest or concern to the Subcommittee, this section sets out its thinking on selected topics and may be taken to reflect the current approach of the Subcommittee to the issues that it addresses. Chapter VI, the sixth and final section of the report, is forward-looking: It sets out the Subcommittee's proposed plan of work for the coming year and highlights any particular plans that it has or challenges that it faces.

5. Lastly, it should be noted that it has been decided that the period which the annual report covers will be changed. This report covers the period from April to December 2010 and future annual reports will cover the calendar year to which they relate. Not only does this change have the merit of simplicity, but it also means that the reporting cycle will reflect the enlargement of the Subcommittee, which comes into being on 1 January 2011.

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<sup>1</sup> 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. For the text of the Optional Protocol, see [www2.ohchr.org/english/law/cat-one.htm](http://www2.ohchr.org/english/law/cat-one.htm). In accordance with the Optional Protocol (art. 16, para. 3), the Subcommittee presents its public annual reports to the Committee against Torture.

## II. The year in review

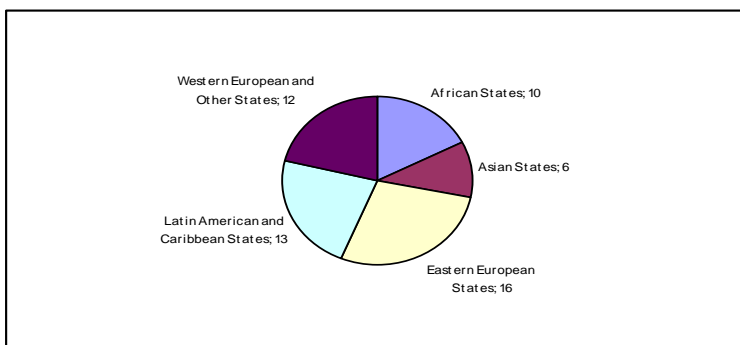
### A. Participation in the Optional Protocol system

6. As of 31 December 2010, 57 States are party to the Optional Protocol.<sup>2</sup> Since April 2010, seven States have ratified or acceded to the Optional Protocol: Luxembourg (19 May 2010); Burkina Faso (7 July 2010); Ecuador and Togo (20 July 2010); Gabon (22 September 2010); Democratic Republic of the Congo (23 September 2010); and Netherlands (28 September 2010). In addition, three States have signed the Optional Protocol during the reporting period, these being: Bulgaria and Panama (22 September 2010) and Zambia (27 September 2010).

7. As a result of increase in the number of States parties, the pattern of regional participation has changed somewhat, there now being the following number of parties in each of the regions:

#### States parties by region

Africa	10
Asia	6
Eastern Europe	16
Group of Latin American and Caribbean States (GRULAC)	13
Group of Western European and Other States (WEOG)	12

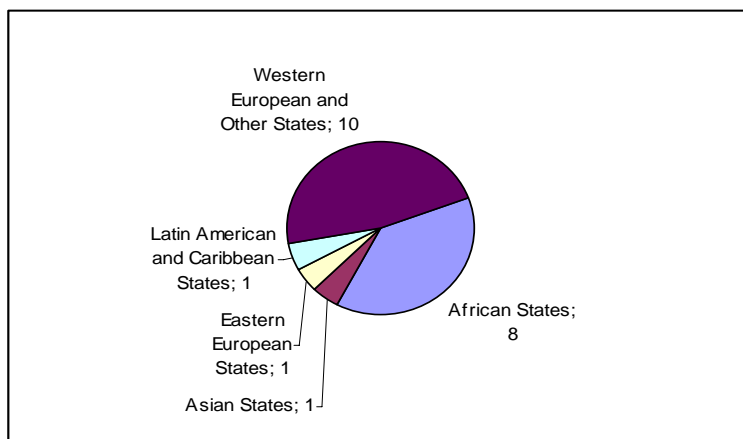


8. The regional breakdown of signatory States which are yet to ratify the Optional Protocol is now as follows:

#### States that have signed but not ratified the Optional Protocol, by region (total 21)

Africa	8
Asia	1
Eastern Europe	1
Group of Latin American and Caribbean States (GRULAC)	1
Group of Western European and Other States (WEOG)	10

<sup>2</sup> For a list of the States parties to the Optional Protocol, see annex I.



## B. Organizational and membership issues

9. During the reporting period (1 April 2010 – 31 December 2010), the Subcommittee held two one-week sessions at the United Nations Office in Geneva, from 21 to 25 June and from 15 to 19 November 2010.

10. The Subcommittee membership did not change during 2010.<sup>3</sup> However, on 28 October 2010, at the third Meeting of States Parties to the Optional Protocol, five Subcommittee members were elected to fill the vacancies of members of the Subcommittee whose terms of office would expire on 31 December 2010. Furthermore, in conformity with article 5, paragraph 1, of the Optional Protocol, 15 members were elected in order to expand membership of the Subcommittee to 25 members, following the fiftieth ratification in September 2009. In order to ensure an orderly handover of membership and in accordance with established practice, the term of office of 7 of the additional 15 members has been reduced to 2 years by ballot. The term of office of all the newly elected members will start on 1 January 2011 and, in conformity with the Subcommittee's rules of procedure, they will make a solemn declaration at the opening of the February 2011 session before assuming their duties.

11. The Subcommittee's rules of procedure currently provide for the election of a bureau, comprising the Chairperson and two Vice-chairpersons, the members of which serve for a period of two years. The Bureau, which was elected in February 2009 and continues in office until February 2011, comprises Mr. Rodríguez-Rescia as Chairperson and Mario Coriolano and Hans Draminsky Petersen as Vice-Chairpersons. In view of its forthcoming expansion, the Subcommittee decided at the twelfth session to expand the Bureau to five members at its thirteenth session.

12. During the reporting period, the Subcommittee revised its allocations of internal responsibilities, largely to reflect, support and encourage its growing engagement with national and regional partners. Mr. Coriolano and Mr. Ginés continued to serve in the role of Subcommittee focal points on NPMs during 2010. A new system of regional focal points was also decided upon. The role of these focal points is to undertake liaison and facilitate coordination of Subcommittee's engagement within the regions they serve. Focal points for Africa, Asia, Europe and Latin America will be appointed by the enlarged Subcommittee at its thirteenth session.

<sup>3</sup> See annex III, sect. A.

### **C. Visits conducted during the reporting period**

13. The Subcommittee carried out four visits in 2010, all of which fell within the reporting periods. From 24 May to 3 June 2010, the Subcommittee visited Lebanon, the third country in Asia visited by the Subcommittee (following the visit to Maldives in December 2007 and Cambodia in December 2009), and the first country to be visited by the Subcommittee in the Arab region (Lebanon being the first and currently the only Arab country which has ratified the Optional Protocol).

14. From 30 August to 8 September 2010, the Subcommittee visited the Plurinational State of Bolivia, the fourth country visited by the Subcommittee in Latin America (following the visit to Mexico in August – September 2008, to Paraguay in March 2009 and Honduras in September 2009).

15. From 6 to 13 December 2010, the Subcommittee visited Liberia, the third country visited by the Subcommittee in Africa (following the visit to Mauritius in October 2007 and Benin in May 2008).

16. In addition to these three visits, which were announced at the start of 2010, for the first time, the Subcommittee undertook a follow-up visit, to Paraguay from 13 to 15 September 2010.

17. Further summary information on all these visits is given in annex IV and further details, including lists of places visited, are available in the press releases issued in relation to each visit, which may be accessed via the Subcommittee's website ([www2.ohchr.org/english/bodies/cat/opcat/index.htm](http://www2.ohchr.org/english/bodies/cat/opcat/index.htm)).

### **D. Follow-up activities, including publication of the Subcommittee's reports by States parties**

18. Five Subcommittee visit reports have been made public following a request from the State party (Honduras, Maldives, Mexico, Paraguay and Sweden), as provided for under article 16, paragraph 2, of the Optional Protocol, including two in the reporting period: Mexico and Paraguay (in May 2010). Two follow-up replies (Sweden and Paraguay) have also been made public at the request of the State party, including Paraguay during the reporting period (in June 2010). Also during the reporting period, three visit reports and one follow-up submission have been published, adding considerably to the momentum behind the practice of authorizing the publication of reports, which the Subcommittee considers to be a positive development.

19. In conformity with past practice, the Subcommittee established a follow-up procedure to its visit reports. State parties are requested to provide within a six-month deadline a response giving a full account of actions taken to implement the recommendations contained in the visit report. At the time of the submission of the present report, 3 out of 11 States parties visited by the Subcommittee had provided follow-up replies: Mauritius in December 2008; Sweden in January 2009; and Paraguay in March 2010. Replies from Mauritius remain confidential, while the follow-up submissions from Sweden and Paraguay have been made public at the request of those States parties. The Subcommittee has provided its own follow-up observations and recommendations to the submissions of Mauritius and Sweden, while a follow-up visit was undertaken to Paraguay, with a follow-up visit report transmitted to the State party. Reminders were also sent to States parties that have not yet provided follow-up replies to the Subcommittee visit reports. It should be noted that the six-month deadline for submission of follow-up replies had not expired for Lebanon, Bolivia and Liberia during the reporting period. The

substantive aspects of the follow-up process are governed by the rule of confidentiality, excepting that the State party may authorize the publication of its follow-up reply.

## **E. Developments concerning the establishment of national preventive mechanisms**

20. Out of 57 States parties, 27 have officially notified the Subcommittee of the designation of their NPMs. Information concerning those NPMs that have been designated by States parties are listed on the Subcommittee's website (<http://www2.ohchr.org/english/bodies/cat/opcat/mechanisms.htm>).

21. Six official notifications of designation were transmitted to the Subcommittee in 2010: Denmark (in connection with the Ombudsperson for Greenland), Germany (in connection with the Joint Commission of the *Laender*), Mali, Mauritius, Spain and Switzerland. It should be noted that, in the cases of Chile and Uruguay, NPMs that had been officially designated had not yet commenced their functioning as an NPM.

22. Thus, 30 States parties have not yet notified the designation of NPMs to the Subcommittee. The one-year deadline for the establishment of an NPM as provided for under article 17 of the Optional Protocol has not yet expired for seven States parties (Burkina Faso, Democratic Republic of the Congo, Ecuador, Gabon, Luxembourg, Netherlands and Togo). Furthermore, three States parties (Kazakhstan, Montenegro and Romania) have made a declaration under article 24 of the Optional Protocol permitting them to delay designation for up to an additional two years.

23. Twenty States parties have therefore not complied with their obligation under article 17, which is a matter of major concern to the Subcommittee. It should, however, be noted that the Subcommittee believes that three States parties (Armenia, the former Yugoslav Republic of Macedonia and Nigeria) have designated NPMs, but has not yet been officially notified thereof.

24. The Subcommittee has continued its dialogue with all States parties which had not yet designated their NPM, encouraging them to communicate with the Subcommittee regarding their progress. Such States parties were requested to provide detailed information concerning their proposed NPM (such as legal mandate, composition, size, expertise, financial and human resources at their disposal, and frequency of visits). Seven States parties have provided written material on all or some of these matters.<sup>4</sup>

25. The Subcommittee has also established and maintained contacts with NPMs themselves, in fulfilment of its mandate under article 11 (b) of the Optional Protocol. At its eleventh session, the Subcommittee held a meeting with the Albanian NPM in order to exchange information and experiences and discuss areas for future cooperation. At its twelfth session, the Subcommittee held similar meetings with the German, Swiss and Mexican NPMs. The Subcommittee is also pleased that 10 NPMs have transmitted their annual reports during 2010, and these have been posted on its website.

26. During the course of the reporting period, Subcommittee members accepted invitations to be involved in a number of meetings at the national, regional and international levels, concerning the designation, establishment and development of NPMs. Those activities were organized with the support of civil society organizations (in particular the Association for the Prevention of Torture (APT), the Rehabilitation and Research Centre for Torture Victims and the OPCAT Contact Group), NPMs, regional bodies such as the

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<sup>4</sup> For information thereon, see the Subcommittee's website.



African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights, the Council of Europe, the European Union and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (ODHIR-OSCE), as well as international organizations such as the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Development Programme and the International Coordination Committee of National Human Rights Institutions. These events included:

- (a) April 2010: Regional seminar held in Dakar, Senegal on the Optional Protocol in Africa organized by APT and Amnesty International in collaboration with the African Commission on Human and Peoples' Rights;
- (b) May 2010: Presentation of the Spanish NPM organized by the Spanish Ombudsman;
- (c) May 2010: Conference on Strengthening the Ombudsperson Institution as the NPM in Azerbaijan organized by ODHIR-OSCE;
- (d) May 2010: A series of activities aimed at promoting the implementation of the Optional Protocol in Brazil organized by APT;
- (e) June 2010: Seminar on the NPM in Uruguay organized by APT, the Inter-American Commission on Human Rights and OHCHR;
- (f) September 2010: Workshops on NPMs in Honduras and Guatemala organized by the Rehabilitation and Research Centre for Torture Victims;
- (g) October 2010: Workshop on NPM establishment in Liberia organized by the RCT;
- (h) October 2010: Regional round table on NPMs under the Optional Protocol – implementation challenges and the role of national human rights institutions, organized in Croatia by the United Nations Development Programme;
- (i) October 2010: Seminar on the Role of national human rights institutions and the Prevention of Torture in East Africa, organized in Kenya by the University of Bristol;
- (j) November 2010: Workshop on Local Preventive Mechanisms, organized in Argentina by the APT.

27. In the framework of the European NPM Project of the Council of Europe/European Union, with APT as implementing partner, the Subcommittee has participated in three thematic workshops: (a) on the role of NPMs in preventing torture and other forms of ill-treatment in psychiatric institutions and social care homes in Italy in March 2010; (b) on rights related to prevention of torture in Albania in June 2010; and (c) on the preparation of visits in Armenia in October 2010; and three on-site visits and exchange of experiences: (a) with the Polish NPM in May 2010; (b) the Georgian NPM in June–July 2010 and the Spanish NPM in November 2010.

28. The Subcommittee would like to take this opportunity to thank the organizers of these events for the invitations to participate which were extended to them.

## **F. Contributions to the Special Fund under article 26 of the Optional Protocol**

29. As at 31 December 2010, the following contributions to the Special Fund established by the Optional Protocol had been received: US\$ 20,271.52 from the Czech

Republic; US\$ 5,000 from the Maldives, and US\$ 82,266.30 from Spain. The table below shows the contributions currently available.

**Contributions received from 2008–2010**

<i>Donors</i>	<i>Amount (in United States dollars)</i>	<i>Date of receipt</i>
Czech Republic	10 000.00	16 November 2009
Czech Republic	10 271.52	30 December 2010
Maldives	5 000.00	27 May 2008
Spain	25 906.74	16 December 2008
Spain	29 585.80	10 November 2009
Spain	26 773.76	29 December 2010

30. At the end of the current reporting period, the United Kingdom of Great Britain and Northern Ireland pledged to support the Special Fund established by the Optional Protocol.

31. The Subcommittee wishes to express its gratitude to these States for their generous contributions.

32. In accordance with article 26, paragraph 1, of the Optional Protocol, the purpose of the Special Fund is to help finance the implementation of Subcommittee recommendations, as well as educational programmes of the national preventive mechanisms. The Subcommittee is convinced that the Special Fund has the potential to be a valuable tool in furthering prevention and it is therefore pleased that a scheme to operationalize the fund has been agreed upon and action will be taken thereon within the forthcoming reporting period. This will be an interim scheme administered by OHCHR and will consider applications relating to recommendations contained in published Subcommittee visit reports concerning particular thematic issues, these to be determined by the Subcommittee in plenary. When finalized, full details of the scheme will be publicized and brought to the particular attention of those States able to benefit therefrom. The Subcommittee very much hopes that the initiation of this scheme will encourage further donations to the Special Fund, in order to allow it to help States implement the Subcommittee's recommendations on prevention.

### **III. Engagement with other bodies in the field of torture prevention**

#### **A. International cooperation**

##### **1. Cooperation with other United Nations bodies**

33. As provided for under the Optional Protocol, the Subcommittee Chairperson presented the third Subcommittee annual report to the Committee against Torture during a plenary meeting held on 11 May 2010. In addition, the Subcommittee and the Committee took advantage of their simultaneous sessions in November 2010 to meet in camera to discuss a range of issues of mutual concern, and also to meet with the newly appointed Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Méndez.

34. In conformity with General Assembly resolution 64/153 of 18 December 2009, in October 2010, the Subcommittee Chairperson presented the third Subcommittee annual report to the General Assembly at its sixty-fifth session in New York. This event also

provided an opportunity for an exchange of information with the Chairperson of the Committee against Torture who also addressed the General Assembly at that session.

35. The Subcommittee has continued to be actively involved in the inter-committee meetings (11th Inter-Committee Meeting from 28 to 30 June 2010 in Geneva) and Chairpersons Meetings of United Nations human rights treaty bodies (from 1 to 2 July 2010 in Brussels). Within that framework, the Subcommittee also contributed to the joint meeting with special-procedure mandate holders. In response to the High Commissioner's call to strengthen the treaty body system and as a follow-up to previous expert meetings dedicated to the work of treaty bodies, the Subcommittee participated to an expert seminar held in Poznan, Poland, in September 2010 (organized by the University of Adam Mickiewicz and the Polish Ministry of Foreign Affairs). It also attended several OHCHR activities, such as the international workshop on "Enhancing cooperation between regional and international mechanisms for the promotion and protection of human rights" and the twenty-third session of the International Coordination Committee of National Human Rights Institutions respectively held in March and May 2010 in Geneva.

36. The Subcommittee continued its cooperation with the United Nations High Commissioner for Refugees and the World Health Organization and initiated cooperation with the United Nations Office on Drugs and Crime (UNODC), inter alia through the Subcommittee's participation to a workshop on "Strategies and best practices against overcrowding in correctional facilities" within the framework of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice held in Brazil in April 2010.

## **2. Cooperation with other relevant international organizations**

37. Based on the experience of previous visits, the Subcommittee refined the modalities of its cooperation and coordination with the International Committee of the Red Cross (ICRC). In 2010, the Subcommittee held a series of meetings with representatives of ICRC in Geneva within the context of preparations of and follow-up to Subcommittee visits and as a process designed to identify lessons learned, with a view to maximizing its cooperation and coordination. As the Optional Protocol provides, ICRC and the Subcommittee are key partners in the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

## **B. Regional cooperation**

38. Through the designation of Subcommittee focal points for the liaison and coordination with regional bodies, the Subcommittee formalized and strengthened its cooperation with other relevant partners in the field of torture prevention, such the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights, the Council of Europe, the European Union and the ODHIR-OSCE. In addition to ongoing activities with those regional bodies in 2010 (see chap. II, sect. E.), during its June 2010 session the Subcommittee held a meeting with the ODHIR-OSCE in order to further exchange information and experiences and discuss potential areas of cooperation.

## **C. Civil society**

39. The Subcommittee has continued to benefit from the essential support provided by civil society actors, both the OPCAT Contact Group (present during the Subcommittee's November session) and academic institutions (in particular the Universities of Bristol and Padua, and the Arizona State University, the latter through its Centre for Law and Global

Affairs at the Sandra Day O'Connor College of Law), both for the promotion of the Optional Protocol and its ratification, and for Subcommittee activities.

#### **IV. Issues of note arising from the work of the Subcommittee during the period under review**

##### **A. Article 24 of the Optional Protocol**

40. In the third annual report it was noted that the Office of Legal Affairs had proposed that the discrepancy between differing language versions of article 24 of the Optional Protocol be addressed by rectifying the Spanish and Russian texts to provide that States parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the Optional Protocol "upon ratification", rather than "after ratification". This change entered into force, with retroactive effect, as of 29 April 2010.

##### **B. The development of the Subcommittee's working practices**

41. Throughout the course of the year the Subcommittee reflected on its working practices. It now has the benefit of four years of experience on which to draw, but is also conscious that its expansion from 10 to 25 members poses both challenges for the continuation of its existing modus operandi and opportunities to develop additional forms of activities in the fulfilment of its mandate. As has been made clear in previous annual reports, the Subcommittee has three primary functions, set out in article 11 of the Optional Protocol. These are to: (a) conduct visits to places of detention in accordance with the provisions of the Optional Protocol; (b) exercise a variety of functions in relation to NPMs; and (c) cooperate more generally with other relevant mechanisms working for the prevention of torture.

42. These are open-ended functions and it is clear to the Subcommittee that there is no natural limit to the total amount of work which it could be expected to undertake in the fulfilment thereof. In practice, the limits that exist are those imposed by constraints resulting from a shortage of personnel (both within the Subcommittee and within its secretariat), time and money. The Subcommittee recognizes that it is in no different a position to any other bodies operating within the framework of OHCHR in facing these difficulties, but encourages OHCHR to address these shortages to the best of its ability, bearing in mind that its expansion from 10 to 25 members is intended to facilitate an increased overall level of activity. For its part, the Subcommittee recognizes that it must seek to make the most effective and efficient use of the resources available to it.

43. So far, the Subcommittee has focused its resources on conducting visits to States parties lasting on average between 8 and 10 days, which have included meetings with ministers and senior officials, NPMs (where established) and civil society, and conducting unannounced visits to places of detention. The Subcommittee continues to believe that visits of this nature reflect best practice and will continue to conduct such visits as a part of its regular programme of activities.

44. The Subcommittee has not so far been able to devote as much attention as it would have wished to the second and third elements of its mandate. It regrets that it has not had the opportunity to engage more quickly with States in the early stages of their participation in the system of the Optional Protocol, and in particular during the process of establishing their NPMs. Individual members have undertaken a great deal of NPM-related work at the invitation of other regional and national bodies, and the Subcommittee is most grateful to

those who have supported and facilitated it. One lesson learned from this work is that contact during the period leading up to the designation of an NPM and in its early days of operation is most often wanted by both States parties and NPMs and is likely to have the greatest positive impact on the construction of an NPM system which conforms to the provisions of the Optional Protocol.

45. The Subcommittee is tending towards a model by which it would seek to visit States parties as soon as possible following their ratification of the Optional Protocol, in order to offer advice and assistance regarding the establishment of its NPM. Such visits, which would be undertaken as an addition to its current regular programme, need not necessarily include visits to places of detention and so could be of a shorter duration. The Subcommittee also believes that the operation of an effective NPM could be a factor to be taken into account when determining whether to undertake a longer visit.

### **C. Reflections on the role of confidentiality in the work of the Subcommittee**

46. Article 2, paragraph 3, of the Optional Protocol provides, *inter alia*, that the Subcommittee “shall be guided by the principles of confidentiality”. Confidentiality lies at the heart of the philosophy underlying the Optional Protocol, which is that it is possible to engage in a constructive dialogue on matters as sensitive as those relating to torture, cruel and inhuman or degrading treatment or punishment, through the establishment of a relationship founded upon mutual trust, and that confidentiality provides a means of building that relationship. The Subcommittee scrupulously observes the principle of confidentiality in order to help foster such a spirit of constructive engagement. It is the belief of the Subcommittee that the confidentiality of the person and of personal data must always be maintained.

47. As it clear from the Optional Protocol itself, however, confidentiality is a means to an end and may be dispensed with by the State, should it wish to do so, by authorizing the publication of Subcommittee reports and recommendations. While recognizing and respecting the right of States to maintain the confidentiality of reports, the Subcommittee welcomes their publication as a tangible sign of the maturing relationship between it and the State party in their common pursuit of prevention. The Subcommittee believes that the publication of reports significantly enhances their preventive impact by making them available to a wider audience who may then be better placed to share in the task of prevention by either encouraging or facilitating the consideration and implementation of the recommendations that the reports contain. Moreover, the Subcommittee is directly empowered under the Optional Protocol to release, in confidence, elements of its visit reports to the NPM of a State party, should it consider this appropriate, and has done so.

48. Confidentiality is attached to the information obtained during the course of a visit and the reports and recommendations transmitted to a State party thereafter unless and until it is lifted by the State concerned, or through the issuance of a public statement as provided for in the Optional Protocol. It follows therefrom that, while fully respecting the principal of confidentiality as provided for in the Optional Protocol, the Subcommittee does not consider either its activities or the approaches that it takes to its work to be confidential as such, and welcomes the opportunity to make them known as widely known as possible. In that context, in 2010, the Subcommittee decided to publish its rules of procedure and its guidelines in relation to visits to States parties.

## **D. Issues arising from visits**

49. The Subcommittee has reflected on the visits it has conducted during the reporting period and believes it worth highlighting a number of general issues which it has encountered.

### **1. Practical aspects of cooperation during visits, including access to persons deprived of their liberty, to places of detention, records, etc.**

50. If the Subcommittee is to be able to undertake its visiting mandate effectively and efficiently it must have the full cooperation of the authorities. In particular, it is important that the authorities do all they can to ensure that those responsible for the day to day running of places of detention are made fully aware of the powers of the Subcommittee under the Optional Protocol in advance of its visits. The Subcommittee recognizes that it is inevitable that some short delay will usually be encountered when it enters a place of detention but believes that this should be measured in minutes, rather than in tens of minutes. It should not be necessary for the Subcommittee to have to explain its powers and mandate every time it arrives at a place of detention. Nor should it be necessary for those in charge of places of detention to refer to higher authorities before facilitating the visit.

51. The Subcommittee still runs into problems concerning access to persons deprived of their liberty, interviewing detainees in private, having access to registers, moving freely within places of detention and having access to any room, place, cupboard, etc. It is difficult to understand why this is the case, given that its mandate is so clearly set out in the Optional Protocol and explained at length to States prior to a visit. In this regard, the Subcommittee has found it immensely helpful when some of its members have been able to go to a country in advance of a visit for informal briefings. These have invariably assisted in identifying and resolving possible difficulties or misunderstandings which, in turn, have made the visits themselves more productive. The Subcommittee would like to undertake such activities prior to all visits if it were possible to do so.

### **2. Overcrowding and pretrial detention**

52. It is evident to the Subcommittee that the overuse — and misuse — of pretrial detention is a general problem that needs to be tackled as a matter of priority. It creates or contributes to the problem of endemic overcrowding, which is known to be rife in many States parties. The Subcommittee continues to be bemused by the complacency which seems to surround the routine use of pretrial detention for prolonged periods and the resulting chronic overcrowding, and all its associated problems. It is no secret that this is a problem in many States party to the Optional Protocol. It ought not to require a visit by the Subcommittee (or by its NPM) for States parties to begin the process of addressing these problems, as they are in any case bound to do as a consequence of their pre-existing human rights commitments. Rather than wait for the Subcommittee to come and recommend the obvious — such as, that the use of pretrial detention be used as the last resort, and only for the most serious offences or where there are serious risks that can only be mitigated by the use of pretrial detention — there is no reason why States parties should not embark on such strategies immediately, thus giving life to their obligation to prevent torture.

### **3. Making safeguards real**

53. Likewise, the Subcommittee continues to wonder why States parties should think it sufficient to have in place laws and procedures which provide for preventive safeguards but which are manifestly not respected in practice. Safeguards can only be safeguards if they are actually used. So, for example, the right of access to a lawyer or to a doctor is virtually meaningless if there are no lawyers or doctors to which access might be had. It is simply

not enough to provide for safeguards on paper only. It is necessary to ensure that there are systems in place to make those safeguards real. The Subcommittee is well aware of the disparities between law and practice in these areas and during its visits it will continue to probe the extent to which the preventive safeguards for which it argues are actually enjoyed in practice.

#### **4. “Normalizing” the unacceptable**

54. The Subcommittee cannot help notice that there is a tendency among some States parties to become inured to conditions and practices which they know to be unacceptable, but which they have come to accept as normal. The Subcommittee thinks it worth emphasizing that just because something is normal within a criminal justice or detention system does not make it right and that it is necessary to challenge such complacency wherever it is found. The Subcommittee understands and accepts that it is necessary to bear in mind the more general situation which is to be found within a given society when determining the precise parameters of provision within its systems of detention. Nevertheless, the Subcommittee does not believe that there can be any excuse for not treating persons deprived of their liberty in accordance with the basic standards of decency as generally reflected in international standards and according them, in practice, the basic guarantees for which the rule of law provides.

#### **5. The Subcommittee and cases concerning individuals (including reprisals)**

55. The Optional Protocol does not establish a “complaints mechanism”, nor are the preventive visits provided for thereunder intended to offer opportunities to investigate, examine and address the situation of particular individuals. The Subcommittee examines the treatment of persons deprived of their liberty in order to inform its general recommendations to the State party on how best to prevent torture and ill-treatment. Although it draws on individual cases of ill-treatment as examples of problems which need to be addressed, it does not seek to provide a remedy for those particular cases – although obviously the Subcommittee hopes and expects that many of the cases of individual mistreatment which it has observed will de facto be mitigated or addressed through the implementation of its generic recommendations.

56. Nevertheless, the Subcommittee is anxious that States parties should fully respect their obligation under the Optional Protocol to ensure that those with whom it meets and speaks during the course of its visits are not disadvantaged as a result. The Subcommittee is well aware that many of the detainees who choose to speak with it are concerned that they will suffer some form of reprisal and is continuing to reflect on how best to address this issue. Early follow-up visits by NPMs and/or by civil society to those places of detention visited by the Subcommittee may offer a potential safeguard in situations of particular concern. The Subcommittee would welcome a debate on this important issue.

#### **6. Prisoner self-governance systems**

57. The Subcommittee continues to encounter situations in which the day-to-day life of closed institutions is very much in the hands of detainees themselves. Sometimes this is the result of neglect, sometimes it is a matter of officially recognized policy. It is axiomatic that the State party remains responsible at all times for the safety and well-being of all detainees and it is unacceptable for there to be sections of institutions which are not under the actual and effective control of the official staff. At the same time, the Subcommittee is aware that some forms of prisoner self-governance systems can play a positive role in improving the day-to-day experience within closed institutions. However, the Subcommittee is also aware of the dangers inherent in such systems and is of the view that there must always be effective safeguards to ensure that such systems of internal self-management do not work to

the detriment of vulnerable prisoners, or are used as means of coercion or extortion. The Subcommittee is aware that such self-governance systems may themselves be connected to or influenced by more general problems of corruption within the criminal justice system, which must also be addressed. In addition, the authorities must ensure that all inmates are treated equally and that any advantages enjoyed by those exercising such functions do not exceed what is reasonably necessary to enable them to perform their recognized and legitimate functions. If such systems do exist, they should be officially recognized, with clear and transparent terms of reference and criteria for the selection of those exercising positions of internal responsibility. Such persons should be closely supervised. In no circumstances should such persons be able to control access to the authorities responsible for the places or detention, including access to medical staff or to complaints mechanisms, or to exercise any disciplinary powers over fellow inmates.

#### **E. Publication of Subcommittee visit reports and dialogue with States parties**

58. As has already been noted, States parties have now authorized the publication of five visit reports and one follow-up reply. Given that three reports have only been relatively recently transmitted, this suggests that there is a welcome trend towards publication. Publication is not, however, an end itself. Rather, it is an important enhancement to the process of dialogue and engagement, allowing the Subcommittee's specific recommendations to be more widely known. The Subcommittee is concerned that follow-up replies to visit reports (published or not) have either not been submitted within the time limit requested or, in some instances, have not been submitted at all. Whereas the former situation delays substantive dialogue on the implementation of recommendations, in the latter situation the focus of dialogue tends to become more focused on the question of when the reply might be received rather than measures of implementation. The Subcommittee therefore urges States parties to submit replies within the time frames requested, so that the dialogue on implementation can commence.

#### **F. The Subcommittee's website**

59. The Subcommittee's website has been mentioned frequently throughout this report. The Subcommittee would, however, like to draw particular attention to the rich sources of information that it contains and those that may easily be accessed through it. For example, it includes copies of relevant correspondence between the Subcommittee and States parties concerning the designation of NPMs. It also includes links to the websites of various national NPMs and copies of NPM annual reports which have been transmitted to the Subcommittee. It also contains links to excellent websites run by NGOs and others, containing materials related to the Optional Protocol. The Subcommittee is keen to see the further expansion of its website and will actively explore the possibilities of using it to facilitate the flow of information concerning the work of the Subcommittee and NPMs.

#### **G. The obligation to establish national preventive mechanisms**

60. Unless a declaration was made under article 24 at the time of ratification (see chap. II, sect. E above), all States parties to the Optional Protocol are obliged to designate their NPM within one year of the Optional Protocol's entry into force. The Subcommittee is aware that the establishment of an NPM is not always easy and recognizes that it is better that it be done well than that it be done poorly in haste. Nevertheless, the Subcommittee believes that establishing an Optional Protocol-compliant NPM is a vital component of the



preventive system and it is concerned that a considerable number of States parties remain in breach of this obligation.

61. The Subcommittee is able to offer advice and assistance on the establishment of an NPM, and believes that States parties should seek such advice and assistance at the earliest opportunity in order to ensure that they comply with their obligations under the Optional Protocol in this regard. To assist in this process, the Subcommittee has revised its initial guidance regarding the establishment of NPMs and this is set out in chapter V of this report.

## **H. The forms that national preventive mechanisms may take**

62. The Subcommittee is frequently asked if there is a preferred model for an NPM to take. The answer is that there is not. The form and structure of the NPM is likely to reflect a variety of factors which are particular to the country concerned, and it is not for the Subcommittee to say in the abstract what may or may not be appropriate. All NPMs must of course be independent. Beyond this, the Subcommittee looks at NPMs from a functional perspective, and recognizes that just because one model works well in one country does not mean it will work well in another. What is important is that the model adopted works well in its country of operation. This is why the Subcommittee does not formally “assess” or “accredit” NPMs as being in compliance with the criteria set forth in the Protocol. Rather, the Subcommittee works with designated NPMs in order to assist them to better operate in accordance with the letter and the spirit of the Optional Protocol.

## **V. Substantive issues**

### **A. Guidelines on national preventive mechanisms**

63. The Optional Protocol provides considerable, detailed guidance concerning the establishment of a national preventive mechanism (NPM), including its mandate and powers. The most relevant of these provisions are articles 3, 4, 17–23, 29 and 35, although other provisions of the Optional Protocol are also of importance for NPMs. It is axiomatic that all NPMs must be structured in a manner which fully reflects these provisions.

64. It is the responsibility of the State to ensure that it has in place an NPM which complies with the requirements of the Optional Protocol. For its part, the Subcommittee works with those bodies which it has been informed have been designated by the State as its NPM. Whilst the Subcommittee does not, nor does it intend to formally assess the extent to which NPMs conform to the Optional Protocol’s requirements, it does consider it a vital part of its role to advise and assist States and NPMs in fulfilling their obligations under the Optional Protocol. To this end, the Subcommittee has previously set out “preliminary guidelines” concerning the ongoing development of NPMs in its first annual report. It has had the occasion to further amplify its thinking in subsequent annual reports and also in a number of recommendations set out in its visit reports. In the light of the experience it has gained, the Subcommittee believes it would be useful to issue a revised set of guidelines on national preventive mechanisms which reflect and respond to some of the questions and issues which have arisen in practice.

65. These guidelines do not seek to repeat what is set out in the text of the Optional Protocol, but to add further clarity regarding the Subcommittee’s expectations regarding the establishment and operation of NPMs. Section 1 sets out a number of basic principles”, which should inform all aspects of the work of an NPM. This is followed in section 2 by guidelines addressed primarily to States and concerning a number of issues relating to the

establishment of NPMs, and in section 3 by guidelines to both the State and to the NPM itself concerning the practical functioning of an NPM.

66. As it gains further experience, the Subcommittee will seek to add additional sections to these guidelines, addressing particular aspects of the work of NPMs in greater detail.

## **1. Basic principles**

67. The NPM should complement rather than replace existing systems of oversight and its establishment should not preclude the creation or operation of other such complementary systems.

68. The mandate and powers of the NPM should be in accordance with the provisions of the Optional Protocol.

69. The mandate and powers of the NPM should be clearly set out in a constitutional or legislative text.

70. The operational independence of the NPM should be guaranteed.

71. The relevant legislation should specify the period of office of the member/s of the NPM and any grounds for their dismissal. Periods of office, which may be renewable, should be sufficient to foster the independent functioning of the NPM.

72. The visiting mandate of the NPM should extend to all places of deprivation of liberty, as set out in article 4 of the Optional Protocol.

73. The necessary resources should be provided to permit the effective operation of the NPM in accordance with the requirements of the Optional Protocol.

74. The NPM should enjoy complete financial and operational autonomy when carrying out its functions under the Optional Protocol.

75. The State authorities and the NPM should enter into a follow-up process with the NPM with a view to the implementation of any recommendations which the NPM may make.

76. Those who engage or with whom the NPM engages in the fulfilment of its functions under the Optional Protocol should not be subject to any form of sanction, reprisal or other disability as result of having done so.

77. The effective operation of the NPM is a continuing obligation. The effectiveness of the NPM should be subject to regular appraisal by both the State and the NPM itself, taking into account the views of the Subcommittee, with a view to its being reinforced and strengthened as and when necessary.

## **2. Basic issues regarding the establishment of an NPM**

### *(a) The identification or creation of the NPM*

78. The NPM should be identified by an open, transparent and inclusive process which involves a wide range of stakeholders, including civil society. This should also apply to the process for the selection and appointment of members of the NPM, which should be in accordance with published criteria.

79. Bearing in mind the requirements of article 18, paragraphs 1 and 2, of the Optional Protocol, members of the NPM should collectively have the expertise and experience necessary for its effective functioning.

80. The State should ensure the independence of the NPM by not appointing to it members who hold positions which could raise questions of conflicts of interest.

81. Members of NPMs should likewise ensure that they do not hold or acquire positions which raise questions of conflicts of interest.

82. Recalling the requirements of articles 18, paragraphs 1 and 2, of the Optional Protocol, the NPM should ensure that its staff have between them the diversity of background, capabilities and professional knowledge necessary to enable it to properly fulfil its NPM mandate. This should include, inter alia, relevant legal and health-care expertise.

(b) *Designation and notification*

83. The NPM should be established within one year of the entry into force of for the State concerned, unless at the time of ratification a declaration has been made in accordance with article 24 of the Optional Protocol.

84. The body designated as the NPM should be publicly promulgated as such at the national level.

85. The State should notify the Subcommittee promptly of the body which has been designated as the NPM.

**3. Basic issues regarding the operation of an NPM**

(a) *Points for States*

86. The State should allow the NPM to visit all, and any suspected places of deprivation of liberty, as set out in articles 4 and 29 of the Optional Protocol, which are within its jurisdiction. For these purposes, the jurisdiction of the State extends to all those places over which it exercises effective control.

87. The State should ensure that the NPM is able to carry out visits in the manner and with the frequency that the NPM itself decides. This includes the ability to conduct private interviews with those deprived of liberty and the right to carry out unannounced visits at all times to all places of deprivation of liberty, in accordance with the provisions of the Optional Protocol.

88. The State should ensure that both the members of the NPM and its staff enjoy such privileges and immunities as are necessary for the independent exercise of their functions.

89. The State should not order, apply, permit or tolerate any sanction, reprisal or other disability to be suffered by any person or organization for having communicated with the NPM or for having provided the NPM with any information, irrespective of its accuracy, and no such person or organization should be prejudiced in any way.

90. The State should inform the NPM of any draft legislation that may be under consideration which is relevant to its mandate and allow the NPM to make proposals or observations on any existing or draft policy or legislation. The State should take into consideration any proposals or observations on such legislation received from the NPM.

91. The State should publish and widely disseminate the annual reports of the NPM. It should also ensure that it is presented to, and discussed in, by the national legislative assembly, or Parliament. The annual reports of the NPM should also be transmitted to the Subcommittee, which will arrange for their publication on its website.

(b) *Points for NPMs*

92. The NPM should carry out all aspects of its mandate in a manner which avoids actual or perceived conflicts of interest.

93. The NPM, its members and its staff should be required to regularly review their working methods and undertake training in order to enhance their ability to exercise their responsibilities under the Optional Protocol.

94. Where the body designated as the NPM performs other functions in addition to those under the Optional Protocol, its NPM functions should be located within a separate unit or department, with its own staff and budget.

95. The NPM should establish a work plan/programme which, over time, encompasses visits to all, or any, suspected, places of deprivation of liberty, as set out in articles 4 and 29 of the Optional Protocol, which are within the jurisdiction of the State. For these purposes, the jurisdiction of the State extends to all those places over which it exercises effective control.

96. The NPM should plan its work and its use of resources in such a way as to ensure that places of deprivation of liberty are visited in a manner and with sufficient frequency to make an effective contribution to the prevention torture and other cruel, inhuman or degrading treatment or punishment.

97. The NPM should make proposals and observations to the relevant State authorities regarding existing and draft policy or legislation which it considers to be relevant to its mandate.

98. The NPM should produce reports following its visits as well as produce an annual report and any other forms of report which it deems necessary. When appropriate, reports should contain recommendations addressed to the relevant authorities. The recommendations of the NPM should take account of the relevant norms of the United Nations in the field of the prevention of torture and other ill-treatment, including the comments and recommendations of the Subcommittee.

99. The NPM should ensure that any confidential information acquired in the course of its work is fully protected.

100. The NPM should ensure that it has the capacity to, and does, engage in a meaningful process of dialogue with the State concerning the implementation of its recommendations. It should also actively seek to follow-up on the implementation of any recommendations which the Subcommittee has made in relation to the country in question, liaising with the Subcommittee when doing so.

101. The NPM should seek to establish and maintain contacts with other NPMs with a view to sharing experience and reinforcing its effectiveness.

102. The NPM should seek to establish and maintain contact with the Subcommittee, as provided for and for the purposes set out in the Optional Protocol.

## **B. The approach of the Subcommittee to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol**

103. It is beyond doubt that States parties to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Optional Protocol”) are under a legal obligation to “prevent” torture and other cruel, inhuman or degrading treatment or punishment. Article 2, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment — to which all States parties to the Optional Protocol must also be parties — provides that, “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”. Article 16, paragraph 1, of

the Convention extends this obligation, providing that, “Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment of punishment which do not amount to torture...”. As explained by the Committee against Torture in its general comment No. 2, “article 2, paragraph 1, obliges each State party to take actions that will reinforce the prohibition against torture”.<sup>5</sup> Whilst the obligation to prevent torture and ill-treatment buttresses the prohibition of torture, it also remains an obligation in its own right and a failure to take appropriate preventive measures which were within its power could engage the international responsibility of the State, should torture occur in circumstances where the State would not otherwise have been responsible.

104. Drawing attention to article 2 of the Convention, the International Court of Justice has observed that “the content of the duty to prevent varies from one instrument to another, according to the wording of the relevant provisions, and depending on the nature of the acts to be prevented”.<sup>6</sup> The Committee has said that the duty to prevent is “wide-ranging”<sup>7</sup> and has indicated that the content of that duty is not static since “the Committee’s understanding of and recommendations in respect of effective measures are in a process of continual evolution”<sup>8</sup> and so are “not limited to those measures contained in the subsequent articles 3 to 16”.<sup>9</sup>

105. The Subcommittee on Prevention of Torture is of the view that, as these comments suggest, it is not possible to devise a comprehensive statement of what the obligation to prevent torture and ill-treatment entails *in abstracto*. It is of course both possible and important to determine the extent to which a State has complied with its formal legal commitments as set out in international instruments and which have a preventive impact but whilst this is necessary it will rarely be sufficient to fulfil the preventive obligation: it is as much the practice as it is the content of a State’s legislative, administrative, judicial or other measures which lies at the heart of the preventive endeavour. Moreover, there is more to the prevention of torture and ill-treatment than compliance with legal commitments. In this sense, the prevention of torture and ill-treatment embraces — or should embrace — as many as possible of those things which in a given situation can contribute towards the lessening of the likelihood or risk of torture or ill-treatment occurring. Such an approach requires not only that there be compliance with relevant international obligations and standards in both form and substance but that attention is also paid to the whole range of other factors which bear upon the experience and treatment of persons deprived of their liberty and which by their very nature will be context specific.

106. It is for this reason that the Optional Protocol seeks to strengthen the protection of persons deprived of their liberty, not by setting out additional substantive preventive obligations but in contributing to the prevention of torture by establishing, at both the international and national levels, a preventive system of regular visits and the drawing up of reports and recommendations based thereon. The purpose of such reports and recommendations is not only to bring about compliance with international obligations and standards but to offer practical advice and suggestions as to how to reduce the likelihood or risk of torture or ill-treatment occurring and will be firmly based on, and informed by, the facts found and circumstances encountered during the visits undertaken. As a result, the Subcommittee is of the view that it is best able to contribute to prevention by expanding on

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<sup>5</sup> CAT/C/GC/2, para 2.

<sup>6</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, Merits, Judgment of 26 February 2007, para. 429.

<sup>7</sup> CAT/C/GC/2, para. 3.

<sup>8</sup> *Ibid.*, para. 4.

<sup>9</sup> *Ibid.*, para. 1.

its understanding of how best to fulfil its mandate under the Optional Protocol, rather than by setting out its views on what prevention may or may not require either as an abstract concept or as a matter of legal obligation. Nevertheless, there are a number of key principles which guide the Subcommittee's approach to its preventive mandate and which it believes it would be useful to articulate.

### **Guiding principles**

107. The guiding principles are the following:

(a) The prevalence of torture and ill-treatment is influenced by a broad range of factors, including the general level of enjoyment of human rights and the rule of law, levels of poverty, social exclusion, corruption, discrimination, etc. Whilst a generally high level of respect for human rights and the rule of law within a society or community does not provide a guarantee against torture and ill-treatment occurring, it offers the best prospects for effective prevention. To that end, the Subcommittee is deeply interested in the general situation within a country concerning the enjoyment of human rights and how this affects the situation of persons deprived of their liberty;

(b) In its work, the Subcommittee must engage with the broader regulatory and policy frameworks relevant to the treatment of persons deprived of their liberty and with those responsible for them. It must also be concerned with how these are translated into practice, through the various institutional arrangements which are established in order to do so, their governance and administration and how they function in practice. Thus a holistic approach to the situation must be taken, informed by, but not limited to its experience gained through its visits to particular places of detention;

(c) Prevention will include ensuring that a wide variety of procedural safeguards for those deprived of their liberty are recognized and realized in practice. These will relate to all phases of detention, from initial apprehension to final release from custody. Since the purpose of such safeguards is to reduce the likelihood or rise of torture or ill-treatment occurring, they are of relevance irrespective of whether there is any evidence of torture or ill-treatment actually taking place;

(d) Detention conditions not only raise issues of cruel, inhuman or degrading treatment or punishment but in some circumstances can also be a means of torture, if used in a manner which accords with the provisions of article 1 of the Convention. Therefore, recommendations regarding conditions of detention play a critical role in effective prevention and will touch on a wide variety of issues, including matters relating to physical conditions, the reasons for, and levels of, occupancy and the provision of, and access to, a wide range of facilities and services;

(e) Visits to States parties and to particular places of detention should be carefully prepared in advance taking into account all relevant factors, including the general legal and administrative frameworks, substantive rights, procedural and due process guarantees pertaining to detention, as well as the practical contexts in which they operate. The manner in which visits are conducted, their substantive focus and the recommendations which flow from them may vary according to such factors and in the light of the situations encountered in order to best achieve the overriding purpose of the visit, this being to maximize its preventive potential and impact;

(f) Reports and recommendations will be most effective if they are based on rigorous analysis and are factually well-grounded. In its visit reports, the Subcommittee's recommendations should be tailored to the situations which they address in order to offer the greatest practical guidance possible. In formulating its recommendations, the Subcommittee is conscious that there is no logical limit to the range of issues that, if explored, might have a preventive impact. Nevertheless, it believes that it is appropriate to

focus on those issues which, in the light both of its visit to the State party in question and its more general experience, appear to it to be most pressing, relevant and realizable;

(g) Effective domestic mechanisms of oversight, including complaints mechanisms, form an essential part of the apparatus of prevention. These mechanisms will take a variety of forms and operate at many levels. Some will be internal to the agencies involved, others will provide external scrutiny from within the apparatus of government, whilst others will provide wholly independent scrutiny, the latter to include the NPM to be established in accordance with the provisions of the Optional Protocol;

(h) Torture and ill-treatment are more easily prevented if the system of detention is open to scrutiny. NPMs, together with national human rights institutions and ombudsman's offices, play a key role in ensuring that such scrutiny takes place. This is supported and complemented by civil society which also plays an important role in ensuring transparency and accountability by monitoring places of detention, examining the treatment of detainees and by providing services to meet their needs. Further complementary scrutiny is provided by judicial oversight. In combination, the NPM, civil society and the apparatus of judicial oversight provide essential and mutually reinforcing means of prevention;

(i) There should be no exclusivity in the preventive endeavour. Prevention is a multifaceted and interdisciplinary endeavour. It must be informed by the knowledge and experience of those from a wide range of backgrounds – e.g. legal, medical, educational, religious, political, policing and the detention system;

(j) Although all those in detention form a vulnerable group, some groups suffer particular vulnerability, such as women, juveniles, members of minority groups, foreign nationals, persons with disabilities, and persons with acute medical or psychological dependencies or conditions. Expertise in relation to all such vulnerabilities is needed in order to lessen the likelihood of ill-treatment.

## **VI. Looking forward**

### **A. The enlargement of the Subcommittee's membership**

108. The Subcommittee will be welcoming 15 new members at its thirteenth session in February 2011. The enlargement of the Subcommittee will in time significantly enhance capacity to fulfil its mandate. During the past year the Subcommittee reviewed its working practices in order to ensure that they are properly systematized and that it will be able to work effectively in a larger plenary group. It has increased its use of Rapporteurs and, as reported previously, sought to streamline its systems for liaising with regional bodies and NPMs. The first task of the enlarged Subcommittee will be to get to know each other and to consider how best to utilize the enhanced range of skills and experience that it will then possess. Training of new members in the approach of the Subcommittee to its work will also be important. The Subcommittee recognizes that expansion will necessitate change, but believes that such change must be informed by its experience of working to fulfil its complex mandate within the unique institutional setting provided by the United Nations and OHCHR. The Subcommittee hopes that, in time, its increased membership will permit it to increase its level of engagement with NPMs, and for this to be conducted in accordance with a systematic programme rather than on a responsive basis, as has tended to be the case to date.

109. The Subcommittee notes that its enlargement means that it has the human resources within its membership to undertake significantly more visits than is currently the case.

However, if the Subcommittee is to be able to take full advantage of the opportunities which its expanded membership offers it is vital that there is a significant increase in its secretariat. Its existing secretariat is already struggling to cope with its demanding workload and it is simply not possible for it to service the increased level of activity which the expansion of the Subcommittee is intended to bring. The Subcommittee believes that an expansion in the size of its secretariat is an essential prerequisite for the further expansion of its work, and that a failure to do so would frustrate the object and purpose of the second sentence of article 5, paragraph 1.

## **B. Plan of work for 2011**

110. In constructing its plan of work for 2011, the Subcommittee has been conscious of the need to balance a number of competing pressures. First, there is a pressing need to take full advantage of the increased membership of the Subcommittee and to construct a programme that helps induct and integrate new members as soon as possible. Second, there is a need to expand the range of follow-up activities with those States which have already received a visit from the Subcommittee, in order to enhance the intensity and effectiveness of the preventive dialogue with them. Third, there is an ongoing and increasing need to engage with NPMs. Fourth, there is a need to establish contact as soon as possible with new States parties. Fifth, there is need to maintain a significant capacity to respond to the ever increasing number of invitation and requests for advice and assistance which are received. Sixth, there is a need to make additional contributions to the overall work of the Office of the United Nations High Commissioner for Refugees where possible. Finally, there is a need to do all of the above within the context of a constrained budget, this requiring innovation and efficiency.

111. To that end, at its twelfth session in November 2010, the Subcommittee decided that, in the course of 2011, it would conduct visits to Brazil, Mali and Ukraine.

112. As in the past, these countries have been chosen after careful reflection, taking into account the variety of factors which have been identified in this and previous annual reports, which include date of ratification/development of NPMs, geographic distribution, size and complexity of State, regional preventive monitoring in operation, and specific or urgent issues reported.

## **C. Building working relations with other bodies**

113. The Subcommittee has much formal and informal contact with other bodies at national, regional and international levels. Much is said about collaboration and sharing information, etc., to facilitate each other's work, but it remains the case that this often proves difficult to do in practice. The Subcommittee hopes that establishing a system of regional Rapporteurs will open new opportunities for deepening the level of cooperation. To that end, the Subcommittee believes it may be helpful to set out a possible template for forms of co-operative activities which it has devised to inform its thinking on how best to build such relationships.

114. The Subcommittee believes that it is helpful to distinguish between a number of general forms of cooperative activity:

(a) Promotional/Awareness-raising: as the names imply, these forms of cooperation will be at a relatively general level, typified by one-off presentations of work, in order to foster better mutual understanding of the work of the bodies in question and of the Subcommittee. Such activities ought to be encouraged where resources permit and where it has broad, strategic significance for the work of the Subcommittee;



(b) Information exchange: where bodies are working in a relevant field, it will often be useful to share information on current issues, approaches and practices to enable each body to be better informed about the work the other is doing, or issues which it faces or is seeking to tackle so as to be able to take this into account when fulfilling its own mandate;

(c) Coordination: where bodies are engaged in similar activities, either in conducting visits to places of detention or in engaging with NPMs it will be often useful to ensure that the planned activities do not conflict with each other, both practically and conceptually;

(d) Participation: this involves playing a role in the activities of a relevant body in a manner which goes beyond those more general forms of engagement set out in subparagraphs (a) and (b) above. It may, for, example, involve a commitment to an event or a process which is led by others but which is believed to be significant for the work of the Subcommittee;

(e) Collaboration: this involves partnership in devising and delivering activities on a shared basis, with joint responsibility for both its design and execution.

115. At any given time the Subcommittee is liable to be involved in a range of such forms of engagement with a variety of bodies. There may often be an element of “confidence-building” within such relationships, as experience of successful relations encourages a move from one level of cooperation to another. However, it is not a question of “progression” within a relationship: each request or opportunity for cooperation must be considered on its own merits, though the overall nature of the institutional relationship may form part of the background to particular decisions.

## Annexes

### Annex I

#### States parties to the Optional Protocol to the Convention against Torture as of 31 December 2010

<i>Participant</i>	<i>Signature, succession to signature<sup>(d)</sup></i>	<i>Ratification, accession<sup>(a)</sup>, succession<sup>(d)</sup></i>
Albania		1 Oct. 2003 <sup>a</sup>
Argentina	30 Apr. 2003	15 Nov. 2004
Armenia		14 Sep. 2006 <sup>a</sup>
Australia	19 May 2009	
Austria	25 Sep. 2003	
Azerbaijan	15 Sep. 2005	28 Jan. 2009
Belgium	24 Oct. 2005	
Benin	24 Feb. 2005	20 Sep 2006
Bolivia	22 May 2006	23 May 2006
Bosnia and Herzegovina	7 Dec. 2007	24 Oct. 2008
Brazil	13 Oct. 2003	12 Jan. 2007
Bulgaria	22 Sep. 2010	
Burkina Faso	21 Sep. 2005	7 July 2010
Cambodia	14 Sep. 2005	30 Mar. 2007
Cameroon	15 Dec. 2009	
Chile	6 June 2005	12 Dec. 2008
Congo	29 Sep. 2008	
Costa Rica	4 Feb. 2003	1 Dec. 2005
Croatia	23 Sep. 2003	25 Apr. 2005
Cyprus	26 July 2004	29 Apr. 2009
Czech Republic	13 Sep. 2004	10 July 2006
Democratic Republic of the Congo		23 Sep. 2010 <sup>a</sup>
Denmark	26 June 2003	25 June 2004
Ecuador	24 May 2007	20 July 2010

<i>Participant</i>	<i>Signature, succession to signature<sup>(d)</sup></i>	<i>Ratification, accession<sup>(a)</sup>, succession<sup>(d)</sup></i>
Estonia	21 Sep. 2004	18 Dec. 2006
Finland	23 Sep. 2003	
France	16 Sep. 2005	11 Nov. 2008
Gabon	15 Dec. 2004	22 Sep. 2010
Georgia		9 Aug. 2005 <sup>a</sup>
Germany	20 Sep. 2006	4 Dec 2008
Ghana	6 Nov. 2006	
Guatemala	25 Sep. 2003	9 June 2008
Guinea	16 Sep. 2005	
Honduras	8 Dec. 2004	23 May 2006
Iceland	24 Sep. 2003	
Ireland	2 Oct. 2007	
Italy	20 Aug. 2003	
Kazakhstan	25 Sep. 2007	22 Oct. 2008
Kyrgyzstan		29 Dec. 2008 <sup>a</sup>
Lebanon		22 Dec. 2008 <sup>a</sup>
Liberia		22 Sep. 2004 <sup>a</sup>
Liechtenstein	24 June 2005	3 Nov. 2006
Luxembourg	13 Jan. 2005	19 May 2010
Madagascar	24 Sep. 2003	
Maldives	14 Sep. 2005	15 Feb. 2006
Mali	19 Jan. 2004	12 May 2005
Malta	24 Sep. 2003	24 Sep. 2003
Mauritius		21 June 2005 <sup>a</sup>
Mexico	23 Sep. 2003	11 Apr. 2005
Montenegro	23 Oct. 2006 <sup>d</sup>	6 Mar. 2009
Netherlands	3 June 2005	28 Sep. 2010
New Zealand	23 Sep. 2003	14 Mar. 2007
Nicaragua	14 Mar. 2007	25 Feb. 2009
Nigeria		27 July 2009 <sup>a</sup>

<i>Participant</i>	<i>Signature, succession to signature<sup>(d)</sup></i>	<i>Ratification, accession<sup>(a)</sup>, succession<sup>(d)</sup></i>
Norway	24 Sep. 2003	
Panama	22 Sep. 2010	
Paraguay	22 Sep. 2004	2 Dec. 2005
Peru		14 Sep. 2006 <sup>a</sup>
Poland	5 Apr. 2004	14 Sep. 2005
Portugal	15 Feb. 2006	
Republic of Moldova	16 Sep. 2005	24 July 2006
Romania	24 Sep. 2003	2 July 2009
Senegal	4 Feb. 2003	18 Oct. 2006
Serbia	25 Sep. 2003	26 Sep. 2006
Sierra Leone	26 Sep. 2003	
Slovenia		23 Jan. 2007 <sup>a</sup>
South Africa	20 Sep. 2006	
Spain	13 Apr. 2005	4 Apr. 2006
Sweden	26 June 2003	14 Sep. 2005
Switzerland	25 June 2004	24 Sep. 2009
The former Yugoslav Republic of Macedonia	1 Sep. 2006	13 Feb. 2009
Timor-Leste	16 Sep. 2005	
Togo	15 Sep. 2005	20 July 2010
Turkey	14 Sep. 2005	
Ukraine	23 Sep. 2005	19 Sep. 2006
United Kingdom of Great Britain and Northern Ireland	26 June 2003	10 Dec. 2003
Uruguay	12 Jan. 2004	8 Dec. 2005
Zambia	27 Sep. 2010	

*Note:* The 57 States parties to the Optional Protocol do not include the 21 States having achieved signature or succession to signature, but not having achieved ratification of, or accession or succession, to the Optional Protocol.

## Annex II

### Summary of the mandate of the Subcommittee on Prevention of Torture

1. The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Subcommittee) was 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. It started its work in February 2007. The Subcommittee is currently composed of 10 independent experts from the States parties that have ratified the Optional Protocol. As of January 2011, the number of independent experts will increase to 25, in accordance with article 5, paragraph 1, of the Optional Protocol.
2. The Optional Protocol mandates the Subcommittee to visit all places under the jurisdiction and control of the State party 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. The Subcommittee visits police stations, prisons (military and civilian), detention centres (pretrial detention, immigration detention, juvenile justice establishments, etc.), mental health and social care institutions, and any other places where people are or may be deprived of their liberty. The Subcommittee has a comprehensive preventive approach. During its visits, it examines the situation of persons deprived of their liberty, the prison system and other public agencies with detention authority with the aim of identifying gaps in the protection of the persons concerned and of making recommendations to the State party, which are intended to eliminate or reduce to the minimum the possibilities of torture or ill-treatment. The Subcommittee does not provide legal advice or assist in litigation and does not provide direct financial assistance. Under the Optional Protocol, the Subcommittee has unrestricted access to all places of detention, their installations and facilities and to all relevant information relating to the treatment and conditions of detention of persons deprived of their liberty. The Subcommittee must also be granted access to have private interviews with the persons deprived of their liberty, without witnesses, and to any other person who in the Subcommittee's view may supply relevant information. The States parties undertake to ensure that there are no sanctions or reprisals for providing information to Subcommittee members.
3. Furthermore, the Optional Protocol requires States parties to set up independent national preventive mechanisms (NPMs), which are national bodies mandated to examine the treatment of people in detention, make recommendations to Government authorities to strengthen protection against torture and comment on existing or proposed legislation. The Subcommittee is mandated under article 11, paragraph 1 (b), of the Optional Protocol to advise on and assist both States parties with the development and functioning of NPMs and the NPMs themselves to reinforce their powers, independence and capacities; and about ways to strengthen the protection of persons deprived of their liberty.
4. As provided for under article 11, paragraph 1 (c), of the Optional Protocol, the Subcommittee shall 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.
5. The Subcommittee is guided by the core principles of confidentiality, impartiality, non-selectivity, universality and objectivity. The Optional Protocol is based on cooperation between the Subcommittee and the States parties. During its visits, the Subcommittee

members meet with State officials, NPMs, representatives of national human rights institutions, non-governmental organizations and any other person who can provide information relevant to the mandate.

6. The Subcommittee communicates its recommendations and observations confidentially to the State party, and if necessary, to the NPM. The Subcommittee will publish the report, together with comments from the State party, whenever requested to do so by the State party. However, if the State party makes part of the report public, the Subcommittee may publish all or part of the report. Moreover, if a State party refuses to cooperate or fails to take steps to improve the situation in light of the Subcommittee's recommendations, the Subcommittee may request the Committee against Torture to make a public statement or to publish the Subcommittee report (Optional Protocol, article 16 (4)).

## Annex III

### Members of the Subcommittee on Prevention of Torture

#### A. Composition of the Subcommittee for the present reporting period

<i>Name of member</i>	<i>Expiration of term</i>
Mr. Mario Luis <b>Coriolano</b>	31 December 2012
Ms. Marija <b>Definis-Gojanovic</b>	31 December 2010
Mr. Malcolm <b>Evans</b>	31 December 2012
Mr. Emilio <b>Ginés Santidrián</b>	31 December 2010
Mr. Zdenek <b>Hájek</b>	31 December 2012
Mr. Zbigniew <b>Lasocik</b>	31 December 2012
Mr. Hans Draminsky <b>Petersen</b>	31 December 2010
Mr. Victor Manuel <b>Rodríguez-Rescia</b>	31 December 2012
Mr. Miguel <b>Sarre Iguíniz</b>	31 December 2010
Mr. Wilder <b>Tayler Souto</b>	31 December 2010

#### B. Bureau of the Subcommittee

Chairperson: Víctor Manuel Rodríguez-Rescia

Vice-Chairpersons: Mario Luis Coriolano and Hans Draminsky Petersen

#### C. Composition of the Subcommittee as of 1 January 2011

<i>Name of member</i>	<i>Expiration of term</i>
Ms. Mari <b>Amos</b>	31 December 2014
Mr. Mario Luis <b>Coriolano</b>	31 December 2012
Mr. Arman <b>Danielyan</b>	31 December 2014
Ms. Marija <b>Definis-Gojanovic</b>	31 December 2012
Mr. Malcolm <b>Evans</b>	31 December 2012
Mr. Emilio <b>Ginés Santidrián</b>	31 December 2014
Ms. Lowell Patria <b>Goddard</b>	31 December 2012
Mr. Zdenek <b>Hájek</b>	31 December 2012
Ms. Suzanne <b>Jabbour</b>	31 December 2012
Mr. Goran <b>Klemenčič</b>	31 December 2012
Mr. Paul <b>Lam Shang Leen</b>	31 December 2012
Mr. Zbigniew <b>Lasocik</b>	31 December 2012
Mr. Petros <b>Michaelides</b>	31 December 2014

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<i>Name of member</i>	<i>Expiration of term</i>
Ms. Aisha Shujune <b>Muhammad</b>	31 December 2014
Mr. Olivier <b>Obrecht</b>	31 December 2014
Mr. Hans Draminsky <b>Petersen</b>	31 December 2014
Ms. Maria Margarida E. <b>Pressburger</b>	31 December 2012
Mr. Christian <b>Pross</b>	31 December 2012
Mr. Victor Manuel <b>Rodríguez-Rescia</b>	31 December 2012
Ms. Judith <b>Salgado Alvarez</b>	31 December 2014
Mr. Miguel <b>Sarre Iguíniz</b>	31 December 2014
Ms. Aneta <b>Stanchevska</b>	31 December 2014
Mr. Wilder <b>Tayler Souto</b>	31 December 2014
Mr. Felipe <b>Villavicencio Terreros</b>	31 December 2014
Mr. Fortuné Gaétan <b>Zongo</b>	31 December 2014

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## Annex IV

**Information on country visit reports, publication status and follow-up as of 31 December 2010**

<i>Country visited</i>	<i>Dates of the visit</i>	<i>Report sent</i>	<i>Report status</i>	<i>Response received</i>	<i>Response status</i>
Mauritius	8–18 October 2007	Yes	Confidential	Yes	Confidential
Maldives	10–17 December 2007	Yes	Public	No	-
Sweden	10–14 March 2008	Yes	Public	Yes	Public
Benin	17–26 May 2008	Yes	Confidential	No	-
Mexico	27 August–12 September 2008	Yes	Public	No	-
Paraguay	10–16 March 2009	Yes	Public	Yes	Public
Honduras	13–22 September 2009	Yes	Public	No	-
Cambodia	2–11 December 2009	Yes	Confidential	No	-
Lebanon	24 May–2 June 2010	Yes	Confidential	-	-
Bolivia (Plurinational State of)	30 August–8 September 2010	Not yet	-	-	-
Paraguay	Follow-up visit: 13–15 September 2010	Yes	Confidential	-	-
Liberia	6–13 December 2010	Not yet	-	-	-