

**CAT SUBCOMMITTEE ON PREVENTION, CAT/C/40/2 (2008)**

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

**(February 2007 to March 2008)**

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**I. INTRODUCTION**

1. The present document is the first annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. The Subcommittee was established<sup>1</sup> following the entry into force in June 2006<sup>2</sup> of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>3</sup> As at 31 January 2008, the Optional Protocol had 34 States parties and 33 signatories.<sup>4</sup>

3. A total of 10 experts were elected by the then States parties as independent members of the Subcommittee in October 2006<sup>5</sup> and met for the first time in Geneva, at the Office of the United Nations High Commissioner for Human Rights (OHCHR) on 19 February 2007. The present report gives an account of the work of the Subcommittee during its first year, covering the period from February 2007 to 15 March 2008.<sup>6</sup>

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

\*\* Owing to time constraints, the footnotes in the present document are reproduced as received, without formal editing.

<sup>1</sup> In accordance with Article 2 paragraph 1 of the OPCAT.

<sup>2</sup> The OPCAT entered into force on 23 June 2006, 30 days after the twentieth ratification/ accession, in accordance with Article 28,1 of the OPCAT.

<sup>3</sup> The OPCAT was adopted by the United Nations General Assembly in its Resolution 57/199 of 18 December 2002. Link to the text of the Optional Protocol: <http://www2.ohchr.org/English/law/cat-one.htm>.

<sup>4</sup> A list of States Parties to the OPCAT is contained in annex I.

<sup>5</sup> Article 5 paragraph 1 provides that the number of SPT members shall increase to twenty-five with the fiftieth ratification of the OPCAT.

<sup>6</sup> In future years, it is intended that the SPT's public annual reports will cover a twelve month period; in its first year the SPT was invited to adopt an annual report at the end of its first session

4. In accordance with the Optional Protocol,<sup>7</sup> the Subcommittee submits its public annual reports to the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

## **II. MANDATE OF THE SUBCOMMITTEE**

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

5. The Subcommittee is a new type of United Nations treaty body with a unique mandate established under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>8</sup>

6. Article 1 of the Optional Protocol provides for a system of regular visits by mechanisms at the international and national levels to prevent all forms of ill-treatment of people who are deprived of their liberty. It establishes the Subcommittee as the international preventive mechanism with a global remit and 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.

### **B. Key features of the Subcommittee's mandate**

7. The mandate of the Subcommittee is set out in article 11 of the Optional Protocol,<sup>9</sup> establishing that the Subcommittee shall:

(a) Visit places where people are or may be deprived of liberty;

(b) With regard to national preventive mechanisms, advise and assist States parties, when necessary, in their establishment; maintain direct contact with national preventive mechanisms and offer them training and technical assistance; advise and assist national preventive mechanisms 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 the national preventive mechanisms;

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

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

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on 23 February 2007, but decided against doing so, as it met for the first time on 15 February to begin its work.

<sup>7</sup> Article 16 paragraph 3.

<sup>8</sup> SPT webpage link: <http://www2.ohchr.org/english/bodies/cat/opcat/>.

<sup>9</sup> Part III "Mandate of the Subcommittee on Prevention".

### **C. Powers of the Subcommittee under the Optional Protocol**

9. In order for the Subcommittee to fulfil its mandate, it is granted considerable powers under article 14 of the Optional Protocol. Each State party is required to allow visits by the Subcommittee to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.<sup>10</sup>

10. States parties furthermore undertake to grant the Subcommittee unrestricted access to all information concerning persons deprived of their liberty and to all information referring to the treatment of those persons and to their conditions of detention.<sup>11</sup> They are also required to grant the Subcommittee private interviews with persons deprived of liberty without witnesses.<sup>12</sup> The Subcommittee has the liberty to choose the places it wants to visit and the persons it wants to interview.<sup>13</sup> Similar powers are to be granted to national preventive mechanisms, in accordance with the Optional Protocol.<sup>14</sup>

### **D. Preventive approach**

11. The work of the Subcommittee is guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity, in accordance with article 2.3 of the Optional Protocol. The report on a visit is part of the dialogue between the Subcommittee and the authorities aimed at preventing torture and other cruel, inhuman or degrading treatment or punishment. The report on a visit to a State party is confidential until such time as it is made public in accordance with the provisions of the Optional Protocol.<sup>15</sup>

12. Whether or not ill-treatment occurs in practice, there is always a need for States to be vigilant in order to prevent it. The scope of preventive work is large, encompassing any form of abuse of people deprived of their liberty which, if unchecked, could grow into torture or other cruel, inhuman or degrading treatment or punishment. Preventive visiting looks at legal and system features and current practice, including conditions, in order to identify where the gaps in protection exist and which safeguards require strengthening. The Subcommittee's preventive approach is forward-looking. In examining examples of both good and bad practice, the

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<sup>10</sup> OPCAT, Articles 4 and 12 (a).

<sup>11</sup> OPCAT, Article 12 (b) and 14 paragraph 1 (a) and (b).

<sup>12</sup> OPCAT, Article 14 paragraph 1 (d).

<sup>13</sup> OPCAT, Article 14 paragraph 1 (e).

<sup>14</sup> OPCAT, Articles 19 and 20.

<sup>15</sup> OPCAT, Article 16,2. The SPT shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by the State Party. If the State Party makes part of the report public, the SPT may publish all or part of the report. If the State Party refuses to co-operate with the SPT or to take steps to improve the situation in the light of the SPT's recommendations, the SPT may request the CAT to make a public statement or publish the SPT report, after the State Party has had an opportunity to make known its views.

Subcommittee seeks to build upon existing protections and to eliminate or reduce to a minimum the possibilities for abuse.

13. The Subcommittee is required to observe confidentiality in its preventive work and looks forward to cooperating with all States parties to the Optional Protocol in strict confidentiality and with a shared commitment to improving the safeguards for prevention of all forms of ill-treatment of people deprived of their liberty.

### **III. VISITS BY THE SUBCOMMITTEE**

#### **A. Establishing the programme of visits**

14. During its first year, the Subcommittee carried out two visits as part of its initial phase of preventive work. The initial programme of visits was *sui generis*, as the Subcommittee was obliged under the Optional Protocol to make an initial choice by drawing of lots for States to be visited. Maldives, Mauritius and Sweden were the countries drawn by lots. Subsequently, the Subcommittee decided on the States to be visited by a reasoned process, with reference to the principles indicated in article 2 of the Optional Protocol. The factors that may be taken into consideration in the choice of countries to be visited by the Subcommittee include date of ratification/development of national preventive mechanisms, geographic distribution, size and complexity of the State, regional preventive monitoring and urgent issues reported.

15. In 2007, the Subcommittee began to develop its approach to the strategic planning of its visit programme in relation to the existing 34 States parties. The Subcommittee took the view that, after the initial period of its development, the visits programme in the medium term should be based on the idea of eight visits per 12-month period. This annual rate of visits is based on the conclusion that, to visit States parties effectively in order to prevent ill-treatment, the Subcommittee would have to visit each State party at least once every four or five years on average. In the Subcommittee's view, less frequent visits could jeopardize the effective monitoring of how national preventive mechanisms fulfilled their role and the protection afforded to persons deprived of liberty. With 34 States parties, this means that the Subcommittee must visit, on average, eight States every year.

16. In the initial phase of visits, the Subcommittee developed its approach, working methods and benchmarks, and established ways to work in good cooperation and confidentiality with States parties with whom it began to build an ongoing dialogue. It also began to develop good working relations with national preventive mechanisms or with institutions which might become them. At this stage, the secretariat necessary to support a full programme of visits was not in place. The Subcommittee consequently carried out visits at less than maximum capacity during the period covered by the present report.

17. For the longer term, the point at which ratifications or accessions will reach a total of 50 remains an unknown variable in the strategic planning of visits. Following that event, the Subcommittee will become a 25-member body,<sup>16</sup> with a concomitant requirement for an increase in budgetary resources. The Subcommittee anticipates a period of adjustment at that stage, before it is able to use its increased capacity to the full.

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<sup>16</sup> In accordance with Article 5 (1) of the OPCAT.

## **B. Visits carried out in 2007 and early 2008**

18. The Subcommittee visited Mauritius from 8 October to 18 October 2007 and the Maldives from 10 to 17 December 2007; it visited Sweden from 10 to 15 March 2008.<sup>17</sup> During these visits, the delegations focused on the development process of the national preventive mechanism and the situation with regard to protection against ill-treatment, particularly of people deprived of their liberty in police facilities, prisons and in facilities for children.

19. At the end of 2007, the Subcommittee announced its forthcoming programme of regular visits in 2008, to Benin, Mexico, Paraguay and Sweden.<sup>18</sup> The Subcommittee also made plans for a number of preliminary visits to initiate the process of dialogue with States parties.

20. The initial visit to a State party is an opportunity to deliver important messages about the Subcommittee and its core concerns to the State party and to other relevant interlocutors. The Subcommittee stressed the confidential nature of its work, in accordance with the Optional Protocol. On its first three visits, it met with many officials in order to establish cooperative relations with the States parties and to explain fully its mandate and preventive approach. The Subcommittee also met with members of developing national preventive mechanisms and with members of civil society.

21. The first two visits involved a larger number of Subcommittee members than would normally be the case, in order that all members could take part in at least one visit in 2007. This was part of the Subcommittee's strategy to develop a consistent approach on visits despite the changing composition of delegations on visits. The visit to Sweden was of shorter duration. The Subcommittee adopted a more targeted approach, taking into account the preventive visiting already undertaken in Sweden and based on consultation and cooperation with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.<sup>19</sup>

22. At the end of each visit, the delegation presented its preliminary observations to the authorities in confidence. The Subcommittee wishes to thank the authorities of Mauritius, the Maldives and Sweden for the spirit in which its delegations' initial observations were received and the constructive discussion about ways forward. At the end of the visit, the Subcommittee asked the authorities for feedback on the steps taken or being planned to address the issues raised in the preliminary observations. In addition, after each visit, the Subcommittee wrote to the authorities requesting updated information on any steps taken since the visit, on certain issues which could be or were due to be addressed in the weeks following it. The Subcommittee indicated that the immediate replies communicated by the authorities would be reflected in the visit report.

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<sup>17</sup> For details of the places visited, see annex III.

<sup>18</sup> The three countries chosen by initial drawing of lots - Mauritius, Maldives and Sweden - were announced in June 2007 as countries to be visited in the initial programme of visits. For the programme of regular SPT visits in 2008, see annex IV.

<sup>19</sup> Article 31 of the OPCAT encourages the SPT and bodies established under regional conventions to consult and co-operate with a view to avoiding duplication and promoting effectively the objectives of the OPCAT.

23. The drafting of the first visit report was begun in 2007. The process of its completion is taking longer than desired, owing to the staffing situation in the secretariat of the Subcommittee (see section V below). The authorities will be asked to respond in writing to the visit report; the Subcommittee hopes that, in due course, the authorities will request that the visit report and their response to it be published.<sup>20</sup> Until such time, the visit reports remain confidential.

#### **IV. NATIONAL PREVENTIVE MECHANISMS**

##### **A. Subcommittee work related to national preventive mechanisms**

24. During its first year, the Subcommittee repeatedly made contact with all States parties who were due to establish or maintain national preventive mechanisms in order to encourage them to communicate with the Subcommittee about the ongoing process of developing those mechanisms. States parties to the Optional Protocol were requested to send detailed information concerning the establishment of mechanisms (such as legal mandate, composition, size, expertise, financial resources at their disposal and frequency of visits).<sup>21</sup> By the third session of the Subcommittee in November 2007, only five States parties had provided such information. The Subcommittee decided to send a reminder letter to each State party upon expiration of the deadline for fulfilment of the obligation to establish national preventive mechanisms.

25. The Subcommittee was also in contact with a number of national preventive mechanisms and organizations, including national human rights institutions and non-governmental organizations involved in the development of mechanisms. The initiative for such contacts came from both the Subcommittee and national preventive mechanisms, some of which asked the Subcommittee for assistance. The Subcommittee is considering how to fulfil its mandate in response to requests for assistance from mechanisms in the absence of any budgetary provision for this part of its mandate (see section VI below).

26. During its three visits during the reporting period, the Subcommittee delegation met with the representatives of the national human rights commissions of Mauritius and the Maldives who had been given tasks with regard to the development of national preventive mechanisms. It also met with the parliamentary ombudsmen and the Chancellor of Justice of Sweden, designated as national preventive mechanisms. At its third session in November 2007, the Subcommittee met with representatives of the national preventive mechanism of Mexico at its request.

27. Members of the Subcommittee were also involved in a number of meetings, at the national, regional and international levels, concerning the development of national preventive mechanisms. Although there is no provision in the United Nations regular budget for activities related to the national preventive mechanisms, the Subcommittee 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 Optional Protocol Contact Group.<sup>22</sup>

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<sup>20</sup> In accordance with Article 16,2 of the OPCAT.

<sup>21</sup> Having regard to the elements identified in Articles 3, 4, 11, and 12 of OPCAT.

<sup>22</sup> The organisations involved in the OPCAT Contact Group are indicated in annex IX.

This association of organizations involved in work related to the implementation of the Optional Protocol sponsored the participation of Subcommittee members in a range of important gatherings of key interlocutors and assisted the Subcommittee in its programme of developing working methods (see section V below).

## **B. Preliminary guidelines for the ongoing development of national preventive mechanisms**

28. In order to facilitate dialogue with national preventive mechanisms generally, the Subcommittee wishes to indicate some preliminary guidelines concerning the process of establishing those mechanisms, by the development of new or existing bodies, and concerning certain key features of them:

(a) The mandate and powers of the national preventive mechanism should be clearly and specifically established in national legislation as a constitutional or legislative text. The broad definition of places of deprivation of liberty, in accordance with the Optional Protocol, shall be reflected in that text;

(b) The national preventive mechanism should be established by a public, inclusive and transparent process, including civil society and other actors involved in the prevention of torture; where an existing body is considered for designation as the national preventive mechanism, the matter should be open for debate, involving civil society;

(c) The independence of the national preventive mechanism, both actual and perceived, should be fostered by a transparent process of selection and appointment of members who are independent and do not hold a position that could raise questions of conflict of interest;

(d) Selection of members should be based on stated criteria relating to the experience and expertise required to carry out national preventive mechanism work effectively and impartially;

(e) National preventive mechanism membership should be gender-balanced and have adequate representation of ethnic, minority and indigenous groups;

(f) The State shall take the necessary measures to ensure that the expert members of the national preventive mechanism have the required capabilities and professional knowledge. Training should be provided to national preventive mechanisms;

(g) Adequate resources should be provided for the specific work of national preventive mechanisms, in accordance with article 18, 3 of the Optional Protocol; these should be ring-fenced, in terms of both budget and human resources;

(h) The work programme of national preventive mechanisms should cover all potential and actual places of deprivation of liberty;

(i) The scheduling of national preventive mechanism visits should ensure effective monitoring of such places with regard to safeguards against ill-treatment;

(j) Working methods of national preventive mechanisms should be developed and reviewed with a view to effective identification of good practice and gaps in protection;

(k) States should encourage national preventive mechanisms to report on visits with feedback on good practice and gaps in protection to the institutions concerned, and address recommendations to the responsible authorities on improvements in practice, policy and law;

(l) National preventive mechanisms and the authorities should establish an ongoing dialogue based on the recommendations for changes arising from the visits and the action taken to respond to such recommendations, in accordance with article 22 of the Optional Protocol;

(m) The annual report of national preventive mechanisms shall be published in accordance with article 23 of the Optional Protocol;

(n) The development of national preventive mechanisms should be considered an ongoing obligation, with reinforcement of formal aspects and working methods refined and improved incrementally.

29. The Subcommittee is concerned at the lack of progress to date in many States parties with regard to the required process of consultation for the establishment of national preventive mechanisms and the necessary legislative and practical provisions to ensure that they can work effectively. Unless the mechanisms are able to fulfil their role as the on-the-spot visiting mechanisms for the prevention of ill-treatment, the work of the Subcommittee will be seriously limited and adversely affected. The Subcommittee is keen to continue and intensify its direct contact with national preventive mechanisms 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. States parties**

30. During the reporting period, the Subcommittee sought to establish relations with States parties in accordance with the principle of cooperation<sup>23</sup> and in order to prepare for the start of its operational work.

31. In the context of its sessions in Geneva, the Subcommittee had a joint meeting with representatives of the three States parties (Maldives, Mauritius and Sweden) drawn at first by lot, in accordance with the Optional Protocol.<sup>24</sup> This provided a valuable opportunity for the Subcommittee to inform these States parties of its initial visits programme and to exchange views concerning preventive visiting. Subsequently, the Subcommittee met with representatives of individual States parties at their request shortly before the commencement of a visit, in order to inform them about the programme of forthcoming visits and to discuss various issues arising in relation to the conduct of Subcommittee visits, including the facilitation of visits by authorities, the powers of access of the Subcommittee, the approach of Subcommittee delegations, initial feedback and reporting on the visit and ongoing dialogue. During the period covered by the present report, the individual meetings were held with representatives of Mauritius, Maldives, Sweden and Benin.

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<sup>23</sup> Article 2,4 of the OPCAT.

<sup>24</sup> Article 13,1 of the OPCAT.



## **B. Relevant United Nations bodies**

32. The Optional Protocol establishes a special relationship between the Committee against Torture and the Subcommittee and provides that both organs should hold simultaneous sessions at least once a year.<sup>25</sup> The third session of the Subcommittee was held simultaneously with part of the thirty-ninth session of the Committee; the first joint meeting was held on 20 November 2007. Discussions covered, *inter alia*, the implementation of the Optional Protocol through ratifications; national preventive mechanisms; country visits and their timetabling; cooperation between the Committee and the Subcommittee and sharing of information between them; and public annual reports of the Subcommittee. The two treaty bodies agreed on a short joint statement acknowledging the cordial and productive nature of this historic first meeting, with unanimous agreement to work together on the two complementary mandates.

33. The Committee and the Subcommittee agreed to create a contact group made up of two members from each treaty body to facilitate contacts.

34. The Optional Protocol establishes certain important functions of the Committee with regard to the Subcommittee. The Subcommittee presents its public annual reports to the Committee. In addition, the Committee has the power to lift the veil of confidentiality normally applying to Subcommittee visits if a State party refuses to cooperate with the Subcommittee or to take steps to improve the situation in the light of the Subcommittee's recommendations.<sup>26</sup> The Subcommittee trusts that such an eventuality will not arise and looks forward to cooperating with all the States parties to the Optional Protocol.

35. During its plenary sessions, Subcommittee members discussed relations and attended meetings with members of other relevant United Nations bodies. In particular, given the similarity between the Subcommittee's work and that of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Subcommittee has maintained close contact with the Special Rapporteur and had constructive discussions and exchanges of views with him on issues common to both mandates.

## **C. Other international organizations**

36. The Optional Protocol provides that the Subcommittee should 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 Optional Protocol to prevent torture and other forms of ill-treatment.<sup>27</sup>

37. During its first session from 19 to 23 February 2007, the members of the Subcommittee met with Mauro Palma, then first Vice-President (now President) of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and Trevor Stevens, its Executive Secretary. The issues discussed during the meeting included

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<sup>25</sup> Article 10,3 of the OPCAT.

<sup>26</sup> Articles 16,4 and Article 24 of the OPCAT.

<sup>27</sup> Article 11 (c) and Article 31.

possible cooperation, including systematic transmission to the Subcommittee, on a confidential basis and with the agreement of the State concerned, of visit reports and Government responses<sup>28</sup> of countries that are States parties to both the Optional Protocol and the European Convention for the Prevention of Torture; visits to States parties of the European Convention for the Prevention of Torture; national preventive mechanisms in States parties to the European Convention for the Prevention of Torture; consistency of standards; regular exchange of information; periodic exchanges of opinions; and assistance in the implementation of recommendations.

38. At its second session, in June 2007, the Subcommittee invited Santiago Canton, Executive Secretary of the Inter-American Commission on Human Rights, to participate in its exercise on developing working methods. This was an interesting opportunity for an exchange of views and information concerning approaches to visiting places where people are or may be deprived of their liberty, and allowed for consultation and sharing of information on the complementary work of both bodies,<sup>29</sup> including in relation to follow-up to and implementation of recommendations.

39. Initial talks were held in Warsaw with the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe. A further meeting is scheduled for June 2008.

40. In its initial period of development, the Subcommittee benefited greatly from the support of the International Committee of the Red Cross (ICRC), whose long experience as an international body operating in the field, inter alia under the Geneva Conventions, has direct relevance to the Subcommittee's work. The two treaty bodies continue to maintain a close dialogue on matters of mutual interest.

#### **D. Civil society**

41. During its first year of operation, the Subcommittee cooperated with international and national institutions and organizations<sup>30</sup> working towards the strengthening of the protection of all persons against torture. The Subcommittee met with many non-governmental organizations, including Amnesty International, the Association for the Prevention of Torture, the International Federation of Action by Christians for the Abolition of Torture, the Rehabilitation and Research Centre for Torture Victims (Denmark), the International Commission of Jurists and the World Organization against Torture, as well as with members of academic institutions, such as Bristol University, whose Optional Protocol Implementation Project is of particular interest to the Subcommittee.

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<sup>28</sup> It is the norm for CPT visits reports and responses to be published at the request of the states concerned; the confidential nature of the visit reports and responses relates only to the period before such publication is requested by the state.

<sup>29</sup> In accordance with Articles 11 and 31 of the OPCAT.

<sup>30</sup> In accordance with Article 11 (c) of the OPCAT.

42. The Subcommittee had regular meetings with the Association for the Prevention of Torture in Geneva; during plenary sessions of the Subcommittee, the Association organized a series of Optional Protocol receptions bringing together representatives from permanent missions and for various organizations, including non-governmental organizations working in related areas. The materials and information produced by the Association have been particularly useful in the preparation of visits.

43. During the period covered by the present report, a number of such organizations came together as the Optional Protocol Contact Group.<sup>31</sup> Part of their efforts was directed towards assisting the Subcommittee, in particular by providing expertise concerning national preventive mechanisms and supporting the participation of Subcommittee members in important meetings related to the Optional Protocol (see paragraph 27 above).

44. The relationship between the Optional Protocol Contact Group and the Subcommittee was formalized in February 2008, when representatives of the Group were invited to the fourth session of the Subcommittee in Geneva for an exchange of views and also organized and provided expertise for a workshop concerning national preventive mechanisms on 16 February 2008.

45. The Subcommittee welcomes the contribution made by civil society during the elaboration of the Optional Protocol, in encouraging and supporting the process of its ratification or accession, and in assisting in its implementation.

## **VI. ADMINISTRATIVE AND BUDGETARY MATTERS**

### **A. Resources in 2007**

46. According to article 25 of the Optional Protocol, the expenditure incurred by the Subcommittee in the implementation of the protocol is borne by the United Nations, and that the Secretary-General should provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee under the protocol.

47. When the Subcommittee began its work in 2007, no funding had been approved for it to carry out its mandate, according to information provided to the Subcommittee by OHCHR management advising the Subcommittee at that time. From the outset, the Subcommittee has sought information concerning the budget available for fulfilment of its mandate, in the conviction that such information is vital for it to be able to plan its work strategically. In February 2008, the Subcommittee was provided with certain details on budgetary matters. In the interim, the Subcommittee managed to begin its work, thanks to support from the High Commissioner for Human Rights, who provided resources, including interim secretariat assistance, from extrabudgetary funds. The Subcommittee is very grateful to the High Commissioner for her strong support.

48. In the absence of a regular budget, the Subcommittee therefore worked with staff temporarily and intermittently assigned to assist it during 2007 and will continue to do so until mid-2008, when permanent staff members are due to be appointed to core posts in the

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<sup>31</sup> See annex IX.

Subcommittee secretariat. During its first year of operation, the Subcommittee had four acting secretaries; no staff worked continuously with the Subcommittee, apart from one person, who provided efficient secretarial and administrative help. The Subcommittee looks forward to the beneficial impact of Secretariat continuity on its capacity to fulfil its mandate as of mid-2008.

49. The need for continuity of staffing and for a core secretariat team arises from the Subcommittee's unique mandate and the nature of its work. It is important that staff remain with the Subcommittee at least through the cycle of planning and preparation for a visit, the visit itself, the dialogue following the visit and the drafting and adoption of the visit report, as well as during the process of working with developing national preventive mechanisms. The provision of staff continuity through the recruitment and appointment of a targeted secretariat assigned to support the core work of the Subcommittee would provide the additional benefit that staff going on Subcommittee visits would have previous experience of Subcommittee working methods. The Subcommittee is very grateful to the High Commissioner for agreeing in April 2007 that the Subcommittee should have a "targeted" secretariat team appointed in 2008.

## **B. Budget assumptions**

50. The Subcommittee has been informed by OHCHR that the regular budget approved for the Subcommittee for the biennium 2008-2009 totals \$925,600 (i.e., an average of slightly more than \$460,000 per year) and that no extrabudgetary provision is envisaged for the Subcommittee. The assumptions on which the Subcommittee budget is based allow for four regular visits, lasting 10 days each per year and two short follow-up visits<sup>32</sup> of three days each; these visits are assumed to involve two Subcommittee members, two secretariat and two external experts. On this basis, the Subcommittee would not even be able to carry out a regular visit to each of the existing 34 State parties once every eight years.

51. The Optional Protocol provides for a minimum of two Subcommittee members on a visit. In the budget assumptions, that minimum has become the maximum. Based on Subcommittee members' experience and expertise in preventive visiting, a visit would normally require more than two members. Two external experts and two secretariat staff members would, however, be appropriate for most visits.

52. Moreover, the assumptions in the budget about expenditure for a regular visit appear to significantly underestimate the actual cost of a Subcommittee visit, and would, at best, only apply for a small country without complicating factors, such as a federal system or a large custodial population, to name but two such factors.

53. It is of particular concern to the Subcommittee that there is no specific provision within the regular budget for the Subcommittee mandate to work in direct contact with national preventive mechanisms, since existing budget lines are limited to sessions and visits. Senior OHCHR management has confirmed to the Subcommittee that there is currently no budgetary provision for the Subcommittee to work with national preventive mechanisms outside the context of its visits.

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<sup>32</sup> 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.

54. In the crucial early phase of the development of national preventive mechanisms, during which every State party is obliged to develop and/or maintain national preventive mechanisms, the Subcommittee considers that it must have the capacity to work with the mechanisms. If such work is confined to visits, and if the visits are made in accordance with the current budget assumptions, it will take on average 5 years for the Subcommittee to have direct contact on the spot with the mechanisms, which in some countries will have to wait 9 to 10 years. This calculation is based on the current number of 34 States parties; if the number of Optional Protocol ratifications increases, the scenario will be even worse.

55. Since the outset of the period covered by the annual report, the Subcommittee has been asked to take part in and to provide assistance for activities relating to the development of national preventive mechanisms. When the Subcommittee has requested funding for this work, it has been advised that such activities have not been approved for funding by the United Nations and that, if they are undertaken by Subcommittee members without United Nations funding, they are not official activities of the Subcommittee. The Subcommittee has decided to continue, as far as possible, to respond positively to such requests regarding national preventive mechanisms; it considers that its members undertaking such activity with the agreement of the Subcommittee are working officially on its behalf, even though members' time is donated and other costs are borne by outside sources or self-funding. In this regard, the Subcommittee has been advised that the special fund established under article 26 of the Optional Protocol could provide funding for such activities. However, the Subcommittee has always understood that the fund is intended for providing assistance to States parties and their national preventive mechanisms and to help finance implementation of the recommendations made by the Subcommittee after a visit to a State party, as well as education programmes on the mechanisms, and is therefore not available for Subcommittee work.

56. In the light of the above considerations, the Subcommittee considers that the current budget does not adequately cover the expenditure necessary for it to implement fully the Optional Protocol, and that it has not been provided with the staff, facilities and other resources necessary for the effective performance of its functions, as defined by the Optional Protocol. The Subcommittee consequently considers that it is not yet in a position to fulfil its mandate.

## **VII. ORGANIZATIONAL ACTIVITIES**

### **A. Sessions of the Subcommittee**

57. During the period covered by the present report, the Subcommittee held four one-week sessions: from 19 to 23 February 2007; from 25 to 29 June 2007; from 19 to 23 November 2007; and from 11 to 15 February 2008. These sessions were devoted to a number of internal activities and to planning for field activities, as well as to meeting with representatives of the permanent missions of States parties to be visited in the near future and with representatives of bodies in the United Nations system and from other organizations active in the field of prevention of ill-treatment.

58. The sessions of the Subcommittee included strategic planning and elaboration of selection criteria for the visits programme; definition of approaches to relations with States parties and national preventive mechanisms; discussion on the draft report on the Subcommittee's first visit, methods of work in the field and production of a series of materials designed to provide basic

information about the Subcommittee, including an outline of a Subcommittee visit,<sup>33</sup> a synopsis of the Subcommittee's mandate and work<sup>34</sup> and an information sheet; and the preparation of the Subcommittee factFile,<sup>35</sup> which can be given to persons encountered on visits in order to provide a straightforward explanation about the treaty body.

59. In the course of its plenary sessions in the first year, the Subcommittee elaborated a framework for compilation of visit notes and the drafting, revising and adoption of visit reports. This process is still under review; the Subcommittee anticipates that the content of plenary sessions will change considerably over the next year as the preliminary organizational work is concluded and as the number of visits increases. In future, a greater proportion of session time will be devoted to planning visits, meeting with representatives of State parties to be visited and adopting visit reports. With the arrival of its targeted secretariat, the Subcommittee anticipates adopting on average three reports per session. The Subcommittee drafted its first annual report, however, owing to timing issues related to resources, the report was adopted outside the sessions of the Subcommittee.

### **B. Rules of procedure and guidelines on visits**

60. Early sessions of the Subcommittee focused on developing and adopting certain key internal working documents, including rules of procedure and guidelines on visits. The Subcommittee conceives of the latter as a working document for ongoing review and development, as part of the process of refining its working methods.

### **C. Development of working methods**

61. The Subcommittee considers the development of working methods an essential part of its ongoing activities. It is axiomatic that, at the outset of the establishment of a new treaty body with a unique mandate, this merits particular attention. The Subcommittee's field of work is complex and constantly evolving, with issues of major significance arising during the course of the empirical work, necessitating careful consideration by the entire membership of the Subcommittee. The limited time frame of the plenary sessions does not allow for thorough and focused discussion. The Subcommittee has found it necessary to incorporate an element of this developmental work into its short sessions by extending the core five-day period by a half to one day during the weekend before or after each session.

62. The Subcommittee has been supported in the process of developing its working methods by a number of organizations working in the field. The ICRC organized and provided training staff at its training centre for a two-day exercise focusing on preparing and carrying out visits. The second two-day exercise, also held at the ICRC training centre and partly funded by OHCHR, focused on visiting police facilities and working with national preventive mechanisms and included contributions from Santiago Canton, Executive Secretary of the Inter-American Commission on Human Rights, Mark Kelly, who has worked as a United Nations expert and

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<sup>33</sup> See annex V.

<sup>34</sup> See annex VI.

<sup>35</sup> See annex VII.

former head of unit of the secretariat of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and staff members from the Association for the Prevention of Torture. A third exercise lasting for half a day was organized by the Optional Protocol Contact Group as a workshop concerning national preventive mechanisms.

63. The Optional Protocol provides that Subcommittee 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, OHCHR and the Centre for International Crime Prevention.<sup>36</sup> To date, only a minority of States parties have provided proposals for the roster from which the Subcommittee selects external experts for visits; the Subcommittee has requested State parties who have not already done so to make proposals for the roster of experts, bearing in mind the need for relevant expertise and independence. The first visit, to Mauritius, did not involve any external experts, owing to administrative problems; on the second visit, to the Maldives, however, two external experts accompanied the delegation (R. Vasu Pillai and Mark Kelly) and one external expert (Avetik Ishkhanyan) came on the third visit, to Sweden.

#### **D. Confidentiality and secure communications**

64. In the light of the need for strict confidentiality of certain information arising out of the Subcommittee's unique mandate and the sensitivity of certain information, documents and meetings, security of data has been a longstanding issue for the Subcommittee. Having raised at the very outset its concerns about confidentiality for the protection of persons at risk, the Subcommittee continued its efforts over the course of the year to obtain arrangements for the security of meetings during its session; of stored information and documents during and between sessions; of information on and plans for visits; of a range of aspects of Subcommittee work during visits; and of secure communications after visits in order to ensure the safe discussion and exchange of data used in the production of visit reports and other documents.

65. In November 2007, staff of OHCHR provided the Subcommittee with access to a secure web facility (Extranet) as an interim measure, and, in January 2008, with temporary access to an encrypted and password-protected FTP site pending further development of a secure Internet site. The Subcommittee is grateful that it is now able to exchange information under conditions of confidentiality more commensurate with the nature of its work.

### **VIII. CONCLUSIONS**

66. At this initial stage in its work, the Subcommittee wishes to assess the series of challenges to be met and overcome in order that it may fulfil the role set out for it in the Optional Protocol.

67. The Subcommittee differs from other treaty bodies of the United Nations, in that its core work is in the field and consists not only in visits to States parties to the Optional Protocol, but also in giving advice and assistance to those States and in providing advice and technical assistance, including training, to national preventive mechanisms, with a view to reinforcing the protections of persons deprived of their liberty against torture and other ill-treatment. The Subcommittee has proceeded in its initial year to look for ways to focus on these different, but

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<sup>36</sup> Article 13,3.

equally important, elements of its mandate. As the existing resources provided by the United Nations to the Subcommittee in the reporting period only cover meetings in Geneva and preventive visits to States parties, Subcommittee members have had to look creatively beyond the United Nations in order to carry out work to support the development of national preventive mechanisms. They have done this primarily through participation in initiatives organized and funded by academic and international human rights organizations at the regional and subregional levels. However, in the long run, it is not appropriate that the Subcommittee's ability to fulfil this vital part of its mandate should depend solely, as it currently does, upon outside resources and support.

68. The full mandate clearly envisaged in the Optional Protocol has not yet been realized in practice owing to limited budgetary and human resources, a situation which might not be uncommon during the initial phase of operations of a new body, but which must be resolved fully and permanently for the next phase of work. The Subcommittee looks to the United Nations to provide the financial and human resources necessary for it to fulfil all elements of its mandate under the Optional Protocol.

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## **Annex V**

### **OUTLINE OF A REGULAR SUBCOMMITTEE VISIT**

#### **Before a regular SPT visit**

The SPT notifies the State Party concerned in writing in advance of the planned dates of a regular visit. The SPT also notifies the State Party in writing of the names of the SPT members who will take part in the visiting delegation, the names of external experts who will assist the delegation, as well as the names of the members of the SPT Secretariat who will support the delegation.

The SPT requests information to be provided in advance of the visit, as detailed in the list of official information requested from States Parties.

#### **During the SPT visit**

The SPT delegation carries out the visit according to the principle of co-operation and maintains strict confidentiality concerning its work and its findings.

During the visit, the SPT delegation meets with senior officials of the Ministry responsible for law enforcement (police) and with senior officials of the Ministries responsible for the custody of persons held in pre-trial detention, prison, military detention, immigration detention, psychiatric or social care institutions or any other place where persons are or may be deprived of their liberty. The meetings are scheduled in consultation with the liaison officer(s) for the visit.

The SPT delegation also meets with the NPM(s), if already set up, and discusses all aspects of the establishment and functioning of the NPM(s). If the process of setting up the NPM(s) is still occurring, the delegation meets with persons involved in its establishment. The SPT takes the view that NPM development is an on-going process which the SPT will continue to monitor.



The SPT also meets with national human rights institutions (NHRIs) and non-governmental organisations (NGOs), as well as with others who have information relevant to the SPT's mandate.

The SPT visits a variety of places of deprivation of liberty and speaks in confidence with persons held there and with staff and other persons involved in work relating to such places.

At the end of the visit, the SPT delegation has a final meeting with senior officials of the relevant ministries and bodies. The meeting is an opportunity for the SPT delegation to present its preliminary observations and for a confidential discussion concerning the visit, including issues related to the national preventive mechanism(s) and to the treatment of person deprived of their liberty in places visited. This meeting is an opportunity to identify issues and situations requiring immediate action, as well as other elements of law, system and practice requiring improvement in order to reinforce the safeguards against ill-treatment for persons deprived of their liberty. The authorities may wish to provide immediate feedback on some issues.

The SPT issues a brief written press release indicating that a SPT visit has taken place to the State Party concerned, with a list of the SPT members in the visiting delegation and the persons accompanying them. The press statement indicates that the SPT met with senior officials of the Ministries listed, with representatives of the NPM(s) or potential NPM(s), with NHRIs, NGOs and others and that the SPT visited the places of detention listed.

### **After the SPT visit**

After the visit, but before the adoption of the visit report, the authorities are invited to provide information about developments since the visit in relation to some of the issues raised during the final talks. The SPT will take any such information provided by the authorities into consideration in its visit report.

A confidential report on the visit is subsequently drawn up and adopted by the SPT for transmission to the State Party. The State Party is requested to respond to the recommendations made in the report and to any requests for further information according to a timetable specified in the letter of transmission accompanying the report. The SPT visit report remains confidential until the State Party requests its publication, together with any comments the State Party might wish to make.

The SPT is committed to co-operative and constructive working relationships with the States Parties.

## **Annex VI**

### **THE SUBCOMMITTEE IN BRIEF**

#### **Mandate**

“The objective of the [Optional] Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.” (*Article 1 of the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, (OPCAT)*)

“A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture ...shall be established and shall carry out the functions laid down in the present [Optional] Protocol.” (*Article 2.1 of the OPCAT*)

The OPCAT obliges States to set up independent national bodies for the prevention of torture and ill-treatment at the domestic level. These preventive national mechanisms must be established one year after the entry into force of the OPCAT or of its ratification or accession.

The mandate of the SPT is twofold: to visit all places of detention in States Parties and to provide assistance and advice to both States Parties and National Preventive Mechanisms.

### **Independent experts**

The SPT is composed of 10 independent and impartial experts serving in their individual capacity from different backgrounds and from various countries, which have ratified or acceded to the OPCAT. After the fiftieth ratification of or accession, the number of the members of the SPT shall increase to twenty-five.

SPT membership is multidisciplinary, including lawyers, doctors and inspection experts, among others. Members are elected by States Parties for a four-year term; the term of half the members elected at the first election will expire at the end of two years. They are eligible for re-election once if renominated.

### **Visits**

The SPT visits police stations, prisons (military and civilian), detention centres (e.g. pre-trial detention centres, immigration detention centres, juvenile justice establishments, etc...), mental health and social care institutions and any other places where people are or may be deprived of their liberty. It recommends action to be taken to improve the treatment of detainees, including conditions of detention.

The visits are conducted by at least two members of the SPT. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the field. These experts are selected from a roster of experts prepared on the basis of proposals made by States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned may propose no more than five national experts.

### **Access**

Under the OPCAT, the SPT 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 SPT 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 SPT's view may supply relevant information.

The States Parties undertake to ensure that there are no sanctions or reprisals for providing information to SPT members.

## **Assistance and advice**

According to the OPCAT, the SPT's mandate includes advising and assisting States in the establishment of the NPMs. These national mechanisms have the mandate to examine regularly the treatment of persons deprived of their liberty and make recommendations to the States' authorities in order to improve the conditions of detention. In the framework of the close co-operation between the SPT and the States Parties, the SPT will make itself available for ongoing dialogue concerning the NPMs. Advising States in the development of effective national preventive mechanisms is a key element in the work of the SPT and will form an important part of each visit.

The SPT advises States Parties about reinforcing the powers, independence and capacity of NPMs. The SPT also provides NPMs with advice on and assistance in reinforcing their independence and capacities and strengthening safeguards against ill-treatment of persons deprived of their liberty. The SPT works in close collaboration with the NPMs, in order to ensure ongoing monitoring of all places of detention.

The OPCAT requires that the composition of the NPMs be established in accordance with a process providing all necessary guarantees of the independence of the NPMs, including the pluralist representation of civil society.

## **Principles**

The SPT is guided by core principles: confidentiality, impartiality, non-selectivity, universality and objectivity. The OPCAT is based on co-operation between the SPT and the States Parties. During its visits, the SPT's members meet with State officials, NPMs, representatives of national human rights institutions, non-governmental organizations, as well as with any other person who can provide information relevant to the mandate.

The SPT communicates its recommendations and observations confidentially to the State, and if necessary, to the national preventive mechanisms. The SPT 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 SPT may publish all or part of the report. Moreover, if a country refuses to co-operate or fails to take steps to improve the situation in light of the SPT's recommendations, the SPT may request the Committee against Torture to make a public statement or to publish the SPT report.

The SPT presents a public annual report on its activities to the Committee against Torture.

## **Ratification**

The OPCAT entered into force on 22 June 2006. It is subject to ratification or is open to accession by any State that has ratified or acceded to the Convention against Torture. No reservations shall be made to the Protocol. As of February 2008, there were 34 States Parties.

## **Related Documents**

- Optional Protocol to the Convention against Torture (OPCAT)  
([www.ohchr.org/english/law/cat-one.htm](http://www.ohchr.org/english/law/cat-one.htm))

- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) ([www.ohchr.org/english/law/cat.htm](http://www.ohchr.org/english/law/cat.htm))
- Committee against Torture General Comment No. 2 ([www2.ohchr.org/english/bodies/cat/docs/CAT.C.GC.2.CRP.1.Rev.4\\_en.pdf](http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GC.2.CRP.1.Rev.4_en.pdf))
- Standard Minimum Rules for the Treatment of Prisoners ([www.ohchr.org/english/law/treatmentprisoners.htm](http://www.ohchr.org/english/law/treatmentprisoners.htm))

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## **Annex VII**

### **FACTFILE ON THE SUBCOMMITTEE ON PREVENTION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

#### **What is the SPT?**

The UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) is one of the United Nations mechanisms directed to the prevention of torture and other forms of ill-treatment. It started its work in February 2007.

By the end of January 2008, 34 States from all regions of the world had accepted the United Nations Optional Protocol to the Convention against Torture. The Protocol gives the SPT the right to visit all places of detention in those States and examine the treatment of people held there.

The Protocol also obliges States to set up independent national preventive mechanisms 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 SPT assists and advises the national preventive mechanisms about ways to strengthen safeguards relating to detention and reinforce their powers and independence.

#### **What does the SPT do?**

The SPT visits police stations, prisons (military and civilian), detention centers (pre-trial 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. It recommends action to be taken to improve the treatment of detainees. It does not provide legal advice or assist in litigation, and it cannot provide financial assistance.

#### **How does the SPT do its work?**

The SPT examines conditions of individuals' daily lives in places of detention. SPT members talk in private with people in custody, without the presence of prison or other staff or Government's representatives. Members also talk with Government officials, custodial staff, lawyers, doctors, etc, and can recommend immediate changes. Their work is governed by strict confidentiality and they do not give out names or details. People who provide information to the SPT may not be subject to sanctions or reprisals for having provided information to the SPT.

**Who are the SPT members?**

The SPT is composed of 10 independent and impartial members from various countries which have accepted the Protocol. They have different backgrounds: lawyers, doctors, inspection experts etc. All the SPT members have experience of human rights work. They serve in their individual capacity, do not work for any Government and receive no instruction from state authorities.

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