

## **CAT Subcommittee on Prevention, CAT/C/42/2 (2009)**

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### **I. INTRODUCTION**

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4. Article 25 of the OPCAT states that the “expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations” and that the “Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.” During its second year the SPT has continued to struggle to fulfil the mandate due to factors seriously inhibiting its capacity to do so:

- Budgetary resources limiting preventive visits to three or four per year, meaning that the SPT would visit a State party once every twelve to fifteen years
- No budget provision at all for direct work with national preventive mechanisms, although this is the uniquely important new feature of the OPCAT
- Lack of staff and lack of staff continuity to support this specialized work, resulting in the SPT working with twelve different individual staff members on the six visits carried out to date

5. The SPT regrets to have to report that, for as long as the current support situation remains unchanged, it will not be able to discharge its duties fully under the mandate.

### **II. MANDATE OF THE SUBCOMMITTEE ON PREVENTION OF TORTURE**

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

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

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

7. The mandate of the SPT is set out in the OPCAT in article 11.<sup>1</sup> This establishes that the SPT shall:

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<sup>1</sup> Part III “Mandate of the Subcommittee on Prevention”.

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

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

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

9. In order for the SPT to fulfil its mandate, it is granted considerable powers under the OPCAT (art. 14). Each State party is obliged to allow visits by the SPT to any places under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.<sup>2</sup>

10. States parties further undertake to grant the SPT unrestricted access to all information concerning persons deprived of their liberty and to all information referring to the treatment of those persons, as well as their conditions of detention.<sup>3</sup> They are also obliged to grant the SPT private interviews with persons deprived of liberty without witnesses.<sup>4</sup> The SPT has the liberty to choose the places it wishes to visit and the persons it wishes to interview.<sup>5</sup> Similar powers are to be granted to NPMs, in accordance with the OPCAT.<sup>6</sup>

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

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<sup>2</sup> OPCAT, articles 4 and 12 (a).

<sup>3</sup> Ibid., articles 12 (b) and 14, paragraph 1 (a) and (b).

<sup>4</sup> Ibid., article 14, paragraph 1 (d).

<sup>5</sup> Ibid., article 14, paragraph 1 (e).

<sup>6</sup> Ibid., articles 19 and 20.

## **D. The preventive approach**

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

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

## **III. VISITING PLACES OF DEPRIVATION OF LIBERTY**

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

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

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

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

17. In the course of 2008, the SPT continued to develop its approach to the strategic planning of its visit programme in relation to the existing number of States parties. The SPT takes the view that, after the initial period of SPT development, the visits programme in the medium term should involve ten visits per twelve-month period. This annual rate of visits is based on the

conclusion that, to visit the 46 States parties effectively in order to prevent ill-treatment, the SPT would have to visit each State party at least once every four/five years on average. In the SPT's view, less frequent visits could jeopardize effective support to and reinforcement of NPMs in the fulfilment of their role and the protection afforded to persons deprived of liberty.

18. Four additional ratifications or accessions will bring the total States parties to 50, with a concomitant requirement for an increase in budgetary resources and an increase in SPT membership to 25.<sup>7</sup> With 62 signatories to the OPCAT and the process of ratification well underway in some cases, the SPT trusts that plans for provision for that contingency are in hand. To that end, the SPT has prepared for the OHCHR detailed justified budgetary calculations for its future work (see section VI below).

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

#### **B. Visits carried out from April 2008 through March 2009**

20. The SPT carried out visits to Benin in May 2008, to Mexico in August/September 2008 and to Paraguay in March 2009. During these visits, the delegations focused on the development process of the national preventive mechanisms and on the situation as far as protection of people held in various types of places of deprivation of liberty is concerned.<sup>8</sup>

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

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

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<sup>7</sup> In accordance with article 5, paragraph 1 of OPCAT.

<sup>8</sup> For details of the places visited, see annex III.

of their liberty. They also engaged in discussions with staff working in custodial settings and, in the case of the police, also with those working in the investigation process.

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

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

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

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

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

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

28. As of 31 March 2009, the SPT visit reports on Sweden and the Maldives, (two out of the five States parties to have received an SPT visit report) and the authorities' responses are in the public domain.<sup>9</sup> The SPT hopes that in due course the authorities of every State party visited will request that the visit report and the authorities' response to it be published.<sup>10</sup> Until such time the visit reports remain confidential.

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

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

30. The OPCAT provides that SPT members may be accompanied on visits by experts of demonstrated professional experience and knowledge to be selected from a roster prepared on the basis of proposals made by the States parties, the OHCHR and the United Nations Centre for International Crime Prevention.<sup>11</sup> To date 22 States parties have provided names and details of experts for the roster. In 2008 the United Nations set up a panel to select names to be placed on the roster in addition to the experts proposed by States parties. External experts can contribute to the work of the SPT by providing a diversity of perspectives and professional expertise to complement those of SPT members. The SPT hopes that experts from all regions of the world will be included in the roster. The SPT still awaits the roster of experts and, in its absence, continues to select experts from the list of names proposed by States parties and from among experts widely recognized as having the required relevant expertise. During the period covered by the present report, the SPT was accompanied on one visit by only one expert, owing to budgetary constraints.

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

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<sup>9</sup> See <http://www.ohchr.org/english/bodies/cat/opcat/index.htm>.

<sup>10</sup> In accordance with article 16, paragraph 2 of OPCAT.

<sup>11</sup> Article 13, paragraph 3.

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

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

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

33. The OPCAT requires each State party to set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment - national preventive mechanisms (NPMs).<sup>12</sup> The Optional Protocol sets a time limit for this provision no later than one year from ratification. Most States parties have not met this obligation.

34. During its second year the SPT again made contact with all States parties who were due to establish or maintain NPMs in order to encourage them to communicate with the SPT about the ongoing process of developing NPMs. States parties to the OPCAT were requested to send detailed information concerning the establishment of NPMs (legal mandate, composition, size, expertise, financial resources at their disposal, frequency of visits, etc.).<sup>13</sup> By 31 March 2009, 29 States parties had provided information on all or some of these matters.<sup>14</sup>

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

36. During the course of the year, the SPT had various bilateral and multilateral contacts with NPMs and with organizations, including national human rights institutions (NHRIs) and non-governmental organizations (NGOs) involved in the development of NPMs in all the regions falling under the mandate. The SPT salutes the work of the member organizations of the OPCAT Contact Group (OCG),<sup>15</sup> in partnership with regional bodies such as the African Commission on Human and People's Rights, the Council of Europe, the Inter-American Commission on Human Rights and the OSCE/ODIHR and the Commission of the European Union in organizing gatherings around the world to promote and assist in the implementation of the OPCAT.

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<sup>12</sup> Article 17.

<sup>13</sup> Having regard to the elements identified in articles 3, 4, 11, and 12 of OPCAT.

<sup>14</sup> The official information communicated to the SPT concerning designation, establishment or maintenance of NPMs by all States parties as of 31 March 2009 is available in the SPT's website: <http://www.ohchr.org/english/bodies/cat/opcat/index.htm>.

<sup>15</sup> The organizations involved in the OPCAT Contact Group are indicated in annex VI.

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

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

39. Members of the SPT were also involved in a number of meetings<sup>16</sup> at the national, regional and international level, concerning the development of NPMs. The SPT members consider this part of their mandate so crucial that they have made every effort to be involved through self-funding and/or with generous support, including financial, from the OCG. This association of organizations involved in work related to the implementation of the OPCAT provided the SPT with significant help by sponsoring participation of SPT members in a range of important gatherings of key interlocutors and by assisting the SPT in its programme of developing working methods (see section V, below). The SPT wishes to place on record its gratitude for the continuing vital support of the OCG, in particular in relation to the SPT's work concerning NPMs.

## **B. Questions concerning national preventive mechanisms**

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

41. The SPT has been turning its focus to key questions about the functioning of NPMs in order to inform its approach to implementing its tasks in relation to NPMs, starting from the framework in article 11 of the OPCAT: (a) advising and assisting States parties in establishing NPMs, (b) offering NPMs training and technical assistance with a view to strengthening their

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<sup>16</sup> For a list of activities related to NPMs in which SPT members participated, see annex V.



capacities, (c) advising and assisting NPMs in evaluating the needs and the means necessary to strengthen the protection of people deprived of their liberty and (d) making recommendations and observations to States parties with a view to strengthening the mandate and capacity of NPMs to prevent ill-treatment.

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

## **V. COOPERATION WITH OTHER BODIES**

### **A. Relations with relevant United Nations bodies**

43. The OPCAT establishes a special relationship between the Committee against Torture (CAT) and the SPT and provides that both organs shall hold simultaneous sessions at least once a year.<sup>17</sup> The sixth session of the SPT was held simultaneously with part of the forty-first session of CAT, and the second joint meeting took place on 18 November 2008. The discussion included the following issues: implementation of the OPCAT through ratifications; NPMs; country visits and their time-tabling; cooperation between CAT and the SPT and sharing of information between the two bodies; public annual reports of the SPT.

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

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

46. The Special Fund to provide assistance to States parties in implementing SPT recommendations and to assist the education of NPMs (under article 26 of the OPCAT) is being administered by the OHCHR. The SPT suggested that an independent board of experts should be involved in reviewing applications to the Special Fund. The SPT has always been firmly of the

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<sup>17</sup> Article 10, paragraph 3 of OPCAT.

opinion that the SPT needs to maintain an arms length relationship with the Fund in order to distinguish its role as an independent preventive mechanism from the funding of implementation of its recommendations. It was therefore pleased to learn that the experts on the Board of Trustees of the Voluntary Fund for the Victims of Torture (VFVT) have been approached to act as an independent advisory board to assess how contributions to the Special Fund might be used.

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

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

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

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

## **B. Relations with other relevant international organizations**

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

52. The OPCAT provides that the SPT shall consult with bodies established under regional conventions with a view to cooperating with them and avoiding duplication, in order to promote effectively the objectives of the OPCAT to prevent torture and other forms of ill-treatment.<sup>18</sup>

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

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

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

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

### **C. Relations with civil society**

57. During the reporting period, the SPT worked in close contact with international and national non-governmental organizations<sup>19</sup> engaged in strengthening the protection of all persons against torture.

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

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<sup>18</sup> Articles 11 (c) and 31.

<sup>19</sup> In accordance with article 11 (c) of OPCAT.

information produced by the APT, in the context of the preparation for visits and for interaction with NPMs.

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

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

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

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

### **A. RESOURCES IN 2008/2009**

62. Article 25 of the OPCAT states that the "expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations" and that the "Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol".

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

### **B. Secretariat of the Subcommittee on Prevention of Torture**

64. In May 2008 the SPT welcomed the arrival of its first Secretary, Mr Patrice Gillibert, after a series of acting secretaries over the course of the first fifteen months of operations. The Secretary to the SPT has already proved a great asset, through participation in the three visits carried out following his arrival in post and by virtue of his efforts to improve the organization and support available to the SPT. The SPT also welcomed a new administrative assistant, who has very efficiently and patiently helped the SPT in a wide range of organizational matters.

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

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

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

68. The SPT trusts that in future it will be possible for the SPT to benefit from the support of staff members who have past experience of SPT visits and who have shown themselves suited to this specific kind of work in the field. To that end, the SPT looks forward to the provision of a targeted SPT Secretariat. The SPT has been proposing, since its inception a core team of four suitably trained and experienced staff members agreed at the meeting in April 2007 with the then High Commissioner.<sup>20</sup> A core team would provide the possibility for a degree of continuity of staff involvement in visits as well as in the processes of planning visits and drafting of reports. At the SPT's inception the number of States parties was considerably less than at present and the number continues to rise rapidly. Staff provision should be reviewed as the number of States parties increases.

### **C. Budgetary requirements**

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

70. The SPT considers it essential to revise the original, inappropriate assumptions on which its original budget was based, assumptions which, as the first annual report pointed out, allowed, with certain key omissions, for only four regular visits, lasting ten days each per year and two

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<sup>20</sup> 2 P-4, 2 P-3 posts, in addition to one GS post.

short follow-up visits of three days each.<sup>21</sup> On this basis the SPT would be able to carry out a regular visit to each of the existing 46 State parties once every 12 years.

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

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

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

74. The revised proposals address a matter of particular concern to the SPT - the previous lack of specific provision within the regular budget for the SPT's mandate to work in direct contact with NPMs. In the crucial early phase of the development of NPMs, during which every State party is obliged to designate/establish and/or maintain national preventive mechanisms, the SPT must have the capacity to work with the NPMs. The SPT continues to receive requests to take part in and to provide assistance for activities relating to the development of the NPMs. Such activities have hitherto not been approved for funding by the United Nations. The SPT has endeavoured, as far as possible, to respond positively to such requests with generous support from outside sources, in particular member organizations of the OCG. The SPT regards this work as integral to its mandate and notes that this is reflected in the *Annual Report* of the OHCHR, which refers to the SPT's work in supporting NPMs.<sup>22</sup>

#### **D. Proposals for change**

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<sup>21</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.

<sup>22</sup> OHCHR Annual Report 2007, p. 21.

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

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

## **VII. ORGANIZATIONAL ACTIVITIES**

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### **B. Development of working methods**

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

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

### **C. Confidentiality and secure communications**

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

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