

CAMBODIA

CAT Optional Protocol Article 4 Reports on the Visit of the Subcommittee on Prevention

CAT, CAT/C/42/2 (2009)

III. VISITING PLACES OF DEPRIVATION OF LIBERTY

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B. Visits carried out from April 2008 through March 2009

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

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

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

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

24. During the year the SPT noted with satisfaction that some States parties plan to or are in the process of implementing the Istanbul Protocol as a tool to document torture, first of all in the fight

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

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

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

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

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

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

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

D. Issues arising from the visits

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

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

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

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

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

15/ Article 13, paragraph 3.

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

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Annex IV

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

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Visit to Cambodia: (second half of 2009)

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III. Visiting places of deprivation of liberty

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B. Visits carried out during the reporting period

25. The Subcommittee visited Paraguay, Honduras and Cambodia during the period covered by the report – Paraguay in March, Honduras in September and Cambodia in December. During these visits, the delegations focused on the development process for national preventive mechanisms, on the situation in terms of identifying risks of torture, and on protection for persons held in places of deprivation of liberty of various kinds.¹¹

26. During visits, Subcommittee 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. Where national preventive mechanisms are already in existence, they are important interlocutors for the Subcommittee. Confidential face-to-face interviews with persons deprived of their liberty are the chief means of verifying information and establishing the risk of torture. Delegations 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. Interviews were also held with staff of juvenile centres, psychiatric hospitals and military units.

27. At the end of each regular visit, the Subcommittee delegation presented its preliminary comments to the authorities orally in a confidential wrap-up meeting. The Subcommittee wishes to thank the authorities of Cambodia, Honduras and Paraguay for the spirit in which delegations' initial comments were received and the constructive discussions about ways forward. After each visit the Subcommittee wrote to the authorities, reiterating key preliminary comments and requesting feedback and updated information on any steps taken or being planned since the visit to address the issues raised during the wrap-up meeting, and in particular on specific issues that could have been or were due to be addressed in the weeks following the visit. The Subcommittee indicated that responses communicated by the authorities would be considered in the drafting of the visit report.

28. The authorities were also reminded, later in the period following the visit, that any responses received by the Subcommittee before adoption of the draft visit report in plenary session would form part of the Subcommittee's deliberations when considering adoption. These communications form

¹¹ For details of the places visited, see annex III.

an important part of the ongoing preventive dialogue between the State party and the Subcommittee. The Subcommittee is gratified to report that, for each of the visits carried out to date, it has received feedback from the authorities concerning the preliminary comments, as well as further information, before the adoption of the corresponding report. This is an indication that the first States parties to be visited have embraced the ongoing process of dialogue and incremental progress on prevention.

29. The authorities are asked to respond in writing to the recommendations and to the requests for further information in the Subcommittee's report on the visit to that State, as transmitted to them in confidence after adoption by the Subcommittee. Thus far the competent authorities of two of the countries visited have responded promptly – a clear signal of their willingness to cooperate with the Subcommittee.

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

30. At the time of writing, of the seven visit reports issued to date, only those on Honduras, the Maldives and Sweden, along with the authorities' responses in the case of Sweden, were in the public domain. The Subcommittee hopes that in due course the authorities of every State party visited will request that the visit report and the authorities' response to it should be published. Until such time the visit reports remain confidential.

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Annex III

Visits carried out in 2009

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III. First periodic visit to Cambodia: 2–11 December 2009

Places of deprivation of liberty visited by the delegation

Police facilities

(a) Metropolitan police district (Phnom Penh):

Chamkamon district police inspectorate

Daun Penh district police inspectorate

Seven Makara district police inspectorate

Mean Chey district police inspectorate

(b) Pursat province:

Provincial police inspectorate

Municipal police inspectorate

(c) Kompong Cham province:

Cheung Prey district police inspectorate

Prisons

CC1 prison, Phnom Penh

CC3 prison, Kompong Cham province

Battambang provincial prison, Battambang province

Military facilities

Phnom Penh military prison

Prey Suay commune gendarmerie information office, Battambang province

Mong Russey district gendarmerie base, Battambang province

Bakan district gendarmerie base, Pursat province

Juvenile facilities

Chom Chao centre (under the Ministry of Social Affairs)

Other facilities

Battambang drug rehabilitation centre (under the Military police)

Battambang (Bovel) drug rehabilitation centre (under the provincial police)

Prey Speu centre (social welfare centre, under the Ministry of Social Affairs)

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Annex VII

Information on country visit reports and follow-up as of 26 February 2010

Country visited	Dates of the visit	Report sent	Report status	Response received	Response status
Mauritius	8–18 October 2007	Yes	Confidential	Yes	Confidential
Maldives	10–17 December 2007	Yes	Public	No	-
Sweden	10–14 March 2008	Yes	Public	Yes	Public
Benin	17–26 May 2008	Yes	Confidential	No	-
Mexico	27 August– 12 September 2008	Yes	Confidential	No	-
Paraguay	10–16 March 2009	Yes	Confidential	No	-
Honduras	13–22 September 2009	Yes	Public	No	-
Cambodia	2–11 December 2009	No	-	-	-

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Annex IV

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

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