



Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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**Subcommittee on Prevention of Torture and Other Cruel,
Inhuman or Degrading Treatment or Punishment**

Report on the national preventive mechanism advisory visit to Ecuador made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Report for the national preventive mechanism^{*,}**

* In accordance with the decision adopted by the Subcommittee at its fifth session regarding the processing of its visit reports, the present document was not edited before being sent to the United Nations translation services.

** In accordance with article 16, paragraph 1, of the Optional Protocol, this report was transmitted confidentially to the national preventive mechanism on 4 May 2015. On 17 June 2015, the national preventive mechanism gave notification of its decision to make the report public, in accordance with article 16, paragraph 2, of the Optional Protocol.



Contents

<i>Chapter</i>	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1-7	3
II. Context of the visit of the Subcommittee	8-9	4
III. Recommendations for the national preventive mechanism	10-66	4
A. Recommendations relating to institutional issues	10-45	4
B. Recommendations relating to methodological issues	46-66	12
IV. Final recommendations	67-71	15
Annexes^{***}		
I. List of senior officials and other persons with whom the Subcommittee met		17
II. List of places of deprivation of liberty visited by the Subcommittee		20

*** The annexes are reproduced in the language of submission only.

I. Introduction

1. In accordance with its mandate as set forth in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Optional Protocol”), the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Subcommittee”) visited Ecuador from 1 to 4 September 2014.
2. The Subcommittee was represented by the following members: Ms. Margarida Pressburger, Mr. Felipe Villavicencio Terreros (head of the delegation) and Wilder Tayler-Souto.
3. The delegation of the Subcommittee was assisted by two human rights officers and one security officer from the Office of the United Nations High Commissioner for Human Rights (OHCHR).
4. The purpose of the visit was to provide advisory services and technical assistance to the national preventive mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment of Ecuador (hereinafter referred to as the “national preventive mechanism”) as specified in article 11 (b), subparagraphs (ii) and (iii), of the Optional Protocol. The visit was also intended to assist in building the capacity and reinforcing the mandate of the national preventive mechanism and in evaluating the needs and the means necessary to strengthen the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment in Ecuador. Furthermore, the visit provided an opportunity for establishing cooperative ties between the Subcommittee and the national preventive mechanism of Ecuador in accordance with the provisions of article 20 (f) of the Optional Protocol. To this end, this report sets out recommendations and observations for the benefit of the national preventive mechanism, as stipulated in article 1 (b), subparagraph (iv), of the Optional Protocol.
5. Given that the main purpose of the visit was to provide advisory services and technical assistance to the national preventive mechanism, a series of meetings were held with the Ombudsman and staff of the national preventive mechanism itself in order to discuss working methods and explore ways of strengthening and increasing its effectiveness. In order to observe the national preventive mechanism’s working methodology in action, the Subcommittee visited two centres of deprivation of liberty together with members of the mechanism (see annex II). The centres were chosen by mutual agreement. During the visits, the national preventive mechanism used its habitual working methodology. The members of the Subcommittee adopted the role of observers. During its visit, the Subcommittee also met with State party authorities, the President of the Specialized Standing Committee for Citizen Participation and Social Control of the National Assembly and civil society organizations (see annex I).
6. In accordance with its mandate under article 11 (b), paragraphs (ii) and (iii), the Subcommittee submitted a separate report to the State party with recommendations formulated on the basis of its visit.
7. The Subcommittee wishes to express its gratitude to the Ombudsman and the staff members of the national preventive mechanism for their warm welcome and the assistance provided during the visit and for the interest they showed in cooperating with the Subcommittee in the effective implementation of its mandate under the Optional Protocol.

II. Context of the Subcommittee's visit

8. The Subcommittee's visit took place during the country's transition to a new prison system which involved, among others, the closure of old prisons in very poor condition and their replacement with newly built, regional prisons. In the Quito region, the García Moreno Prison was closed down and, starting in early 2014, most inmates were transferred to the Sierra Centro-Norte Regional Centre of Deprivation of Liberty for Adults in Latacunga, Cotopaxi Province. The transfer of the female inmates took place during the Subcommittee's visit to the country. The Subcommittee also visited the National Police Provisional Detention Centre near García Moreno Prison and observed that the Centre was dilapidated, overcrowded and generally in poor condition.

9. During this process of restructuring the country's prison system, the national preventive mechanism, through its visits and recommendations, can offer essential advice to the authorities concerning the improvements being made and the changes required. The current reform programme provides an opportunity for the national preventive mechanism to enhance its visibility and position itself as key player in the area of prevention and in the protection of detainees from torture and ill-treatment.

III. Recommendations for the national preventive mechanism

A. Recommendations relating to institutional issues

10. The Optional Protocol was ratified by Ecuador on 20 July 2010 and entered into force for the country on 19 August 2010. In accordance with article 17 of the Protocol, the State party is to designate a national preventive mechanism within one year of ratification.

11. By a decision adopted in November 2011 in accordance with the mandate for the prevention of torture conferred upon it by the 2008 Constitution, the Office of the Ombudsman took on the role of national preventive mechanism on its own initiative without additional resourcing. The Ministry of Justice, by official letter No. 09644 of 23 November 2011, informed the Ministry of Foreign Affairs, Trade and Integration that the Office of the Ombudsman would act as the national preventive mechanism. This information was subsequently transmitted to the Subcommittee, which informed the State party on 24 February 2012 that it had taken note of the establishment of the national preventive mechanism.

12. The Office of the Ombudsman has reported that the national preventive mechanism team took up its work during the last quarter of 2012 and began to visit places of deprivation of liberty in 2013. That same year, the national preventive mechanism issued the first report on its activities. In 2014, in order to operationalize its designation as the national preventive mechanism, the Office of the Ombudsman set up the National Directorate for the Prevention of Torture as a structural component of the Office. According to the information made available to the Subcommittee, the National Directorate is an autonomous, independent body that is empowered to issue guidelines; undertake visits; prepare reports, including thematic reports; and conduct training and any other activities for which responsibility has been delegated by the highest authority. The staff of the National Directorate were selected in accordance with the recruitment regulations applying to the Office of the Ombudsman.

Legal basis

13. While the Optional Protocol leaves it to the State party to determine what the institutional format of the national preventive mechanism will be, the structure of the mechanism and the fulfilment of its mandate must be in accordance with the Optional Protocol, as indicated in the “Guidelines on national preventive mechanisms¹”.

14. In the case of Ecuador, the Subcommittee notes that the lack of a solid legal basis for the establishment of the national preventive mechanism is a weakness that has an impact on its work. Therefore, the legislative process leading to the enactment of a new Office of the Ombudsman Organization Act, which was under way at the time of the Subcommittee’s visit, is of the utmost importance.

15. On 10 December 2013, the Ombudsman submitted a bill on the areas of authority, structure and procedures of the Office of the Ombudsman to the National Assembly. That bill had been designed with a view to bringing the functions of the Office into line with the existing constitutional framework. Title IV of the bill, which deals with the prevention of torture and of cruel, inhuman or degrading treatment, provides that the Office of the Ombudsman shall constitute the national preventive mechanism and defines its terms of reference within that framework. The task of considering the bill has been entrusted to the Specialized Standing Committee for Citizen Participation and Social Control of the National Assembly. The Subcommittee thanks the Office of the Ombudsman for having included proposals in the bill which the Subcommittee had put forward in the weeks preceding its visit.

16. In the course of its visit, the Subcommittee had the opportunity to meet with the President of the Specialized Standing Committee, Ms. Dora Aguirre Hidalgo, in the presence of the national preventive mechanism, in order to exchange views on the content of title IV of the bill. Furthermore, as agreed during the meeting of 14 October 2014, the Subcommittee sent a letter to Ms. Aguirre Hidalgo, copied to the national preventive mechanism, with suggestions concerning some aspects of the bill. The Subcommittee submitted the following observations concerning the legal basis for the mechanism:

“Pursuant to article 11 (b), subparagraphs (i) and (iv), of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Subcommittee’s mandate includes the provision of advice and assistance to States parties, as necessary, in relation to the establishment of national preventive mechanisms and the formulation of recommendations and observations with a view to strengthening the capacity and the mandate of those mechanisms. Please note that the comments contained in this letter refer to title IV (Prevention of torture and cruel, inhuman or degrading treatment) of the August 2014 version of the bill. The Subcommittee recognizes the quality of the bill, which is broadly in line with the principles and provisions of the Optional Protocol.

[...] The Subcommittee commends the Committee over which you preside for having conducted such an open process of citizen participation and consultation in building consensus around the bill. The Subcommittee recalls that, pursuant to paragraph 16 of the aforementioned Guidelines, the national preventive mechanism should be identified by an open, transparent and inclusive process which involves a wide range of stakeholders, including civil society. The Subcommittee recommends that the text of the Optional Protocol be made available to participants in the public events held by the Committee to provide information about the bill.

¹ CAT/OP/12/5.

Pursuant to article 18 of the Optional Protocol, the State must guarantee the functional independence of the national preventive mechanism as well as the independence of its staff. It should also make available the necessary resources for the functioning of the mechanism. In addition, paragraph 32 of the Guidelines stipulates that where the body designated as the national preventive mechanism performs other functions in addition to those provided for under the Optional Protocol, its national preventive mechanism functions should be located within a separate unit or department that has its own staff and budget. Bearing this in mind, the bill could make explicit mention of the fact that the Office of the Ombudsman, in its role as the national preventive mechanism, enjoys functional independence and financial autonomy; acts independently and without interference from State authorities; and is empowered to decide upon its own programme of work, designate staff and decide how the budget allocated to it is to be used. With regard to this last point, the Subcommittee notes that the budgetary matters are not specifically addressed in the bill. Bearing in mind the fact that fulfilling the functions of the national preventive mechanism represents an additional task for the Office of the Ombudsman, the Subcommittee deems it important, in accordance with article 18.3 of the Optional Protocol, to specify in the bill that the Office of the Ombudsman will be allocated sufficient additional resources to enable it to fulfil its functions as the national preventive mechanism.

In order to draw a clear distinction between the functions of the national preventive mechanism and other functions of the Office of the Ombudsman, and given the special nature of the former inasmuch as they are derived directly from the mandate set forth in the Optional Protocol, the Subcommittee is of the view that, in articles 56 (obligations of centres of deprivation of liberty) and 57 (visits to centres of deprivation of liberty), the reference to “the Office of the Ombudsman” should be replaced by a reference to “the national preventive mechanism”. The Subcommittee is concerned that the bill, as currently worded, does not ensure the visibility of the national preventive mechanism as a key player in the prevention of torture and ill-treatment. There is also the danger that the preventive mandate of the national preventive mechanism could become intertwined with or diluted by other functions of the Office of the Ombudsman, such as the reception and investigation of individual complaints.

Article 22 of the Optional Protocol provides that the competent authorities shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures. A similar provision is contained in paragraph 13 of the Subcommittee’s Guidelines. The Subcommittee believes that the bill should make explicit mention of this obligation in order to lay the foundations for a regulated, effective procedure for follow-up to recommendations made by the national preventive mechanism.

With regard to article 55 of the bill, which deals with coordination and cooperation with other bodies, the Subcommittee deems it advisable to add an explicit reference to the right of the national preventive mechanism to have contact with the Subcommittee, to send it information and to meet with it, as provided for in article 20 (f) of the Optional Protocol.

Article 23 of the Optional Protocol sets forth the obligation of the State to publish and disseminate the annual reports of the national preventive mechanism. In connection with this obligation, paragraph 29 of the Guidelines provides that the State should ensure that the reports are presented to, and discussed in, the national legislative assembly. The Subcommittee believes that mention of these obligations should be made in the bill.

The Subcommittee also considers it important to add a provision in line with paragraph 27 of the Guidelines, according to which “The State should not order, apply, permit or tolerate any sanction, reprisal or other disability to be suffered by any person or organisation for having communicated with the national preventive mechanism or for having provided the national preventive mechanism with any information, irrespective of its accuracy, and no such person or organisation should be prejudiced in any way.”

17. The first plenary debate of the bill in the National Assembly took place in October 2014 based on the text contained in the report of the Committee dated 24 September 2014. In the course of the debate, some legislators expressed the view that the establishment of the national preventive mechanism would amount to misappropriation of the designated powers of the Ministry of Justice and Human Rights, on the one hand, and sentence administration judges, on the other. It was pointed out that article 669 of the Comprehensive Criminal Code provides that those judges shall inspect centres of deprivation of liberty at least once per month in order to ensure that sentences are being served under proper conditions and that the rights of prisoners are being respected. The article also provides that judges undertaking these inspections shall arrange for appropriate measures to be taken to prevent or correct any irregularities that they may find.

18. In response to these concerns, the Subcommittee sent another letter to Ms. Aguirre Hidalgo on 7 November 2014, copied to the national preventive mechanism, in which it requested that she intervene and remind the legislators of the obligations assumed by Ecuador with its ratification of the Optional Protocol and of the provisions concerning the national preventive mechanism set forth in part IV of the Protocol. In particular, the Subcommittee pointed out that, pursuant to article 19 of the Protocol, such mechanisms are to be granted the following powers, among others: (a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment; and (b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty. With reference to these provisions, the Subcommittee pointed out that the jurisdiction of the national preventive mechanism extends to all places of deprivation of liberty, not only prisons; that its preventive functions apply to all persons deprived of their liberty, not only those serving a sentence; and that this work does not focus on individual cases or the legal situation of persons deprived of their liberty, but rather on general conditions of detention.

19. The Subcommittee also emphasized, in particular, that the mandate of the national preventive mechanism as set forth in the Optional Protocol is broader than the mandate of sentence administration judges as provided for in the Comprehensive Criminal Code and that any possible overlap between functions of the national preventive mechanism and existing, fully operational institutions in Ecuador should be addressed through dialogue and cooperation with a view to affording the most effective protection for persons deprived of their liberty.

20. To this end, the Subcommittee requests the national preventive mechanism to keep it informed of any new developments in the debate on the bill so it may continue to support the national preventive mechanism in accordance with the Optional Protocol.

21. The Subcommittee welcomes the role of the Office of the Ombudsman in the review of existing rules and regulations. In the course of this process, the national preventive mechanism, in its capacity as guarantor of the Optional Protocol at the national level and as a body that is operationally independent from the Office of the

Ombudsman, should be listened to as a qualified expert body in respect of aspects of title IV of the bill that may affect it directly.

22. The Subcommittee therefore recommends that the national preventive mechanism bring to bear the mandate conferred upon it under article 19 (c) of the Optional Protocol. That article grants the mechanism the power to submit proposals and observations concerning existing draft legislation on prevention. The Subcommittee is of the view that the national preventive mechanism is best placed to comment on title IV of the bill, given the valuable experience that it has acquired since 2011.

Status of the national preventive mechanism within the Office of the Ombudsman

23. The Subcommittee is aware that the national preventive mechanism is a new body and that institutional consolidation and capacity-building are still ongoing, including within the Office of the Ombudsman. Structurally, the national preventive mechanism is attached to the Office of the Deputy Ombudsman for Human Rights and Nature within the Directorate-General for Protection of the Office of the Ombudsman. The director of the national preventive mechanism was appointed in January 2014, and this certainly helped to raise the institutional profile of the mechanism. However, the Subcommittee is of the view that the current internal structure of the Office needs to be revisited in order to achieve full compliance with the principle of autonomy enshrined in the Optional Protocol.

24. Firstly, in the current structure, important decisions taken by the national preventive mechanism in fulfilment of its mandate require the approval of the Directorate-General for Protection, the Deputy Ombudsman and the Ombudsman. The Subcommittee is concerned that this procedure may stand in the way of its effectiveness in terms of, for example time management and the autonomy to which the national preventive mechanism is entitled in matters within its area of competence.

25. The Subcommittee recommends that the Office of the Ombudsman enhance the capacity of the national preventive mechanism to act independently, in accordance with article 18 (1) of the Optional Protocol. To this end, the Office of the Ombudsman and the national preventive mechanism should undertake a joint review of the current internal structure, in the light of the experience gained since 2011, with a view to facilitating the decision-making process of the national preventive mechanism.

26. Secondly, the Subcommittee noted that, in practice, the authorities and civil society representatives often think that the Office of the Ombudsman and the national preventive mechanism are one and the same. This is largely due to the shortcomings in the mechanism's legal basis. The Subcommittee notes that, under national law, the prevention of torture falls within the mandate of the Office of the Ombudsman. The Office of the Ombudsman is therefore part of the recently established Technical Agency for Social Rehabilitation, as provided for in article 676 of the Comprehensive Criminal Code. However, the Subcommittee believes that the national preventive mechanism's involvement in the Technical Agency should be such as to reflect its autonomous status within the Office of the Ombudsman, bearing in mind its specific mandate and experience in the area of prevention. The Subcommittee is of the view that, given the Technical Agency's mandate, namely to "evaluate the effectiveness of policies, administer centres of deprivation of liberty and set standards for the fulfilment of the objectives of the social rehabilitation system" (article 202 of the Constitution), the national preventive mechanism has a very valuable contribution to make. The participation of the national preventive mechanism in meetings of the Technical Agency would also help draw attention to the findings that result from its preventive visits and facilitate the implementation of its recommendations.

27. **The Subcommittee recommends that, to the extent possible, the national preventive mechanism be represented in its own right at institutional meetings that concern its mandate so that it may bring to bear its experience and the preventive focus of its work.**

28. The Subcommittee recognizes how valuable the work of the Office of the Ombudsman, its notable public profile, and its experience and infrastructure are in furthering the fulfilment of the national preventive mechanism's mandate. The success of efforts to achieve the Subcommittee's objectives will depend largely on contributions from the Office of the Ombudsman and on its continued prioritization of prevention.

29. **The Subcommittee recommends that the Office of the Ombudsman take appropriate measures to enhance the visibility of the mandate, specialization and activities of the national preventive mechanism so that other institutions and the general public are aware that its functions differ from the other functions performed by the Ombudsman's Office.**

Dialogue with the authorities

30. The work of the national preventive mechanism in designing and developing its various methodologies and the many visits that it has undertaken to centres of deprivation of liberty since its inception do not seem to have had the desired impact, largely because the relevant authorities and institutions have failed to devote attention to its work.

31. Although the Subcommittee understands that the national preventive mechanism is unable to resolve extrinsic issues such as those involving political will or the frequent changes and rotation of officials in ministries and other institutions with which it should liaise, the mechanism could step up its efforts to improve its dialogue with the authorities.

32. Based on its experience in working with national preventive mechanisms in different countries, the Subcommittee has noted that, in cases where ombudsman's offices (national human rights institutions) have taken on the mandate of national preventive mechanisms, it has been difficult for them to build the kind of constructive dialogue envisaged in the Optional Protocol because the authorities have been unable to distinguish clearly between the preventive and reactive roles of these bodies. Since the role of ombudsman's offices involves taking a critical look at State action, calling attention to problems when they arise and processing individual complaints, among other functions, the authorities are often reluctant to cooperate, especially where ombudsman's offices participate in judicial proceedings or are authorized to bring cases before a judge or prosecutor where there is evidence of criminal liability. The Subcommittee is of the view that the current lack of visibility of the national preventive mechanism in Ecuador has a negative impact on its effectiveness and on the extent of the attention that is devoted to its recommendations.

33. **The Subcommittee recommends that the Office of the Ombudsman develop a strategy for disseminating information about the national preventive mechanism, both within the Office and among the relevant authorities and the general public. The Subcommittee recommends that the national preventive mechanism redouble its efforts, through awareness-raising and other advocacy activities, to explain how the fulfilment of its mandate adds value to the work of the Office of the Ombudsman and to clarify the nature of the principle that guides its work, which is based on sustained cooperation and dialogue over the long term as a means of assisting the authorities to make any changes required to prevent torture and ill-treatment.**

34. The Subcommittee noted that the authorities were unaware of the recommendations made by the national preventive mechanism, with the exception of the directors of the places of deprivation of liberty that were visited, with whom the national preventive mechanism appears to have established a good cooperative relationship. The national preventive mechanism informed the Subcommittee that it has prepared 17 reports on its visits to places of deprivation of liberty. However, these reports have not been published because the approval of the Ministry of Justice, which administers the centres in question, had not been forthcoming.

35. During its last meeting with the authorities, and in the presence of the national preventive mechanism, the Subcommittee emphasized that the mechanism's reports are key instruments of dialogue and cooperation. If the relevant authorities and institutions do not respond to the reports within a reasonable time frame and the reports are not published, the mechanism's preventive function cannot be fulfilled and its visibility suffers. The Subcommittee also emphasized that the authorities should take steps to ensure that, as a rule, the reports of the national preventive mechanism are published, with recourse to confidentiality being the exception.

36. The Subcommittee recalls that the principle of confidentiality set forth in the Optional Protocol applies only to the activities of the Subcommittee, not to the activities of national preventive mechanisms. The Subcommittee therefore recommends that the publication of the national preventive mechanism's visit reports should be a matter of course, and that reports should be deemed to be confidential in exceptional cases only. The national preventive mechanism should therefore design a strategy for making use of its visit reports based on a serious consideration of the value of publishing all or part of such reports, as appropriate.

Multidisciplinary approach

37. At the time of the visit of the Subcommittee, the national preventive mechanism was staffed by five professionals (a lawyer, a social worker, two psychologists and a person in charge of international relations). At times, the doctor on the staff of the Office of the Ombudsman or staff from the Directorate-General for Protection of the Ombudsman's Office might accompany staff from the preventive mechanism on visits to centres of deprivation of liberty. Members of the national preventive mechanism spoke to the Subcommittee of the need to secure the services of professionals from other disciplines in order to enable it to carry out its preventive work effectively.

38. The Subcommittee wishes to emphasize that the State party, by virtue of article 18 (3) of the Optional Protocol, is legally bound to allocate the necessary resources to the mechanism. It is important to bear in mind that, in order for the national preventive mechanism to be able to fulfil its functions, it needs to have a multidisciplinary team that includes professionals from the medical, psychiatric, legal and psychosocial fields.

39. Although the Subcommittee is aware that budgetary constraints have an impact on the availability of additional staff, it recommends that the national preventive mechanism diversify its staffing profile and explore the possibility of taking creative steps to bolster its human resources, such as the introduction of internship programmes or cooperative agreements with universities and civil society organizations.

The national preventive mechanism and civil society

40. In its meetings with civil society organizations, the Subcommittee heard criticisms of the way in which the Office of the Ombudsman deals with persons

deprived of their liberty. Some participants claimed that the Office of the Ombudsman has kept silent about prison conditions and about the transfer of persons deprived of their liberty to the new centres. They also said that the visits undertaken to date by the Office of the Ombudsman to inspect prison conditions in the Cotopaxi regional centre were led by personnel of the Ministry of Justice, Human Rights and Religion and that the persons conducting the visits took no account of what persons deprived of their liberty or their families said and did not enter the cells. With regard to the national preventive mechanism, representatives of civil society organizations indicated that it was understaffed; that its members were inexperienced in conducting prison visits and in dealing with issues relating to deprivation of liberty in general; that a multidisciplinary perspective was lacking; and that it had a low profile and that, at the national level, people were unaware of its activities. The view was expressed that the fact that the members of the national preventive mechanism are part of the Office of the Ombudsman might compromise their independence because they are bound by the Ombudsman's policy guidelines. Some representatives urged that these shortcomings be remedied by, among other measures, strengthening the administrative and budgetary independence of the national preventive mechanism, bringing on board doctors with experience in protocols dealing with torture and independent experts to go along on the visits, and ensuring broader participation on the part of civil society.

41. While some civil society representatives who met with the Subcommittee did not have a clear understanding of the work of the national preventive mechanism, others said that they were aware of the valuable work being carried out by the Office of the Ombudsman and the national preventive mechanism to locate clandestine clinics offering treatments to "cure homosexuality" and the work it was doing on behalf of irregular migrants illegally detained in hotels in Quito. The representatives of these organizations were nevertheless largely unaware of the regular visits to centres of deprivation of liberty undertaken by the national preventive mechanism and its reports on those visits.

42. Members of the national preventive mechanism said that meetings had been held with NGOs and associations of relatives on numerous occasions, but that those exchanges had become far and few between because the NGOs repeatedly failed to attend the meetings. The national preventive mechanism staff expressed discomfort with the vehement criticisms of the mechanism, which, in their view, were attributable to the fact that the NGOs did not fully understand the scope of its mandate and that some national NGOs had become politicized.

43. The Subcommittee recalls that the day-to-day presence of NGOs and organizations of relatives in places of deprivation of liberty is a valuable source of information which the national preventive mechanism could take advantage of in order to plan its schedule of visits strategically and to determine the extent to which its earlier recommendations have been implemented. In order to enhance the effectiveness of its work, the national preventive mechanism should cooperate with NGOs and other civil society associations that offer assistance, support or services to persons deprived of their liberty. If this is done and if a detainee then asks staff members of the national preventive mechanism for help during one of its visits, they can provide the person with the appropriate information.

44. The Subcommittee also recalls that, in accordance with article 20 of the Optional Protocol, the national preventive mechanism is entitled to have private interviews with whomever it believes may supply relevant information, including NGOs. By the same token, any person or organization has the right to communicate on a confidential basis with the national preventive mechanism without fear of reprisals.

45. The Subcommittee notes with appreciation the interest shown by the national preventive mechanism in strengthening its dialogue with civil society,

within the scope of its mandate, as an essential tool for reinforcing its preventive role. The Subcommittee therefore encourages the national preventive mechanism to redouble its efforts to promote trust and to build a climate of constructive cooperation with civil society. The Subcommittee reiterates the need for the adoption of measures to make the mandate and the work of the national preventive mechanism known, as a first step towards establishing a fruitful dialogue with civil society. These information and communication activities should be undertaken throughout the country.

B. Recommendations relating to methodological issues

46. The Subcommittee wishes to express its appreciation for the professionalism and competence with which the national preventive mechanism prepares for and conducts visits to places of deprivation of liberty. The Subcommittee notes with satisfaction the swift institutional development and dynamic nature of the national preventive mechanism. The Subcommittee also notes with appreciation the numerous training events that it has conducted, its development of protocols and guidelines for action, its focus on prevention, and the considerable number of detailed and follow-up visits undertaken by the national preventive mechanism in just two years of operation. At the time of the Subcommittee's visit, the national preventive mechanism had visited 24 adult centres of deprivation of liberty, some of them several times, 7 centres for young offenders, a temporary shelter for foreigners and a police training centre.

47. The Subcommittee also takes note of the national preventive mechanism staff members' frankness and willingness to engage in a critical analysis of its limitations, such as its need for more truly multidisciplinary teams and the obstacles to the publication of its reports.

48. The Subcommittee noted the importance that the national preventive mechanism attaches to unannounced visits, which allow for greater insights into the real conditions prevailing in a centre of deprivation of liberty. The national preventive mechanism also respected the principle of confidentiality when engaging with people deprived of their liberty.

49. In order to assist and advise the national preventive mechanism in its task of protecting persons deprived of their liberty, and based on the two visits undertaken jointly with the mechanism (see annex II), the Subcommittee would like to make the following recommendations concerning preparations for visits to places of deprivation of liberty, the methodology to be used during visits and subsequent action.

Preparations for visits

50. The Subcommittee commends the national preventive mechanism upon its establishment of an annual work programme in accordance with articles 4 and 29 of the Optional Protocol.² The Subcommittee notes with satisfaction that the national preventive mechanism holds preparatory meetings prior to visits in order to establish priorities and set up gender-balanced teams.

51. The Subcommittee recommends that the national preventive mechanism continue its strategic planning of visits to places of deprivation of liberty based on its established priorities and that it ensure that its work covers all types of institution in all geographic regions of the country. The Subcommittee therefore encourages the national preventive mechanism to further expand the coverage of its visits to include different categories of places of deprivation of liberty, such as

² CAT/OP/12/5, para. 33.

psychiatric institutions, social welfare homes, detention centres under military jurisdiction, clandestine clinics that “treat” homosexuality, etc., in order to provide the greatest possible protection to persons deprived of their liberty. The Subcommittee recalls that article 4 of the Optional Protocol covers private establishments from which a person is not permitted to leave at will with the consent or acquiescence of a public authority. The Subcommittee recommends that the national preventive mechanism continue to mainstream a gender perspective into all its activities.

During the visits

52. The Subcommittee noted that during its visits to both the National Police Provisional Detention Centre in Quito and the centre of deprivation of liberty in Cotopaxi, the members of the national preventive mechanism introduced themselves correctly to the authorities in the places of detention, explaining their mandate, and the purpose of their visit and placing emphasis on the principle of confidentiality. The Subcommittee observed that the national preventive mechanism staff engaged in a constructive dialogue with the directors of the establishment, who were familiar with the work of the mechanism.

53. The Subcommittee was pleased to note that, when talking to persons deprived of their liberty, the members of the national preventive mechanism explained the purpose of their visit to them and asked for their consent to the interview, clarifying its confidential and voluntary nature.

54. **The Subcommittee believes that it would be good practice to hand out an information brochure to the interviewees which explains the mandate and working methods of the national preventive mechanism and provides contact information. The Subcommittee recommends that the mechanism should produce such a brochure. The brochure should also state that persons deprived of their liberty can report to the mechanism any reprisals taken against them for having been in contact with the national preventive mechanism.**

55. Private interviews with persons deprived of their liberty are a fundamental aspect of preventive visits and are specifically authorized by the Optional Protocol. As a rule, and unless there are substantive reasons for doing otherwise, the Subcommittee recommends that the national preventive mechanism conduct individual, private interviews with persons deprived of their liberty and employees of the institution in question, including medical personnel.

56. The Subcommittee noted that the national preventive mechanism staff have been trained to interview persons deprived of their liberty and succeeded in establishing rapport with them by listening actively and asking specific questions. The Subcommittee took note that the national preventive mechanism teams used checklists and in-house questionnaires during the interviews to ensure that all important aspects were covered. The interviewers also conducted the interviews in such a way that the persons deprived of their liberty could feel at ease and speak spontaneously.

57. The Subcommittee witnessed group and individual interviews. In the National Police Provisional Detention Centre in Quito, the Subcommittee observed a group interview which allowed the team to identify common problems, identify the informal leaders and obtain an idea of the group’s overall state of mind. The team was able to manage the 30-person group with authority, establishing rules for taking turns to speak from the outset. The Subcommittee noted, however, that the national preventive mechanism has no security protocols, which gave rise to potentially dangerous situations for the team. For example, in one of the wards, the team conducted a group interview at the end of a long, narrow corridor where the team members were

completely surrounded by persons deprived of their liberty. The Subcommittee noted that, in the event of an emergency, the team could have been cornered and unable to reach an exit.

58. The Subcommittee recommends that the national preventive mechanism, in consultation with a security specialist, develop protocols and provide its staff with security training. The Subcommittee recommends that, at the beginning of a visit, the national preventive mechanism team carefully consider the security-related restrictions proposed by the staff of the establishment and request information on recent incidents and the measures taken in response to such situations.

59. During the visit to the centre of deprivation of liberty in Cotopaxi, a team decided to conduct a group interview in an enclosed area where several access corridors to the cells met and where some 200 persons deprived of their liberty had gathered. In order to conduct the interview, the interviewer had to step up onto an elevated area in order to make himself heard. However, given the large number of persons present, his efforts were unsuccessful and the persons deprived of their liberty started to show signs of impatience and disgruntlement. The Subcommittee is of the view that this type of interview not only does not yield any positive results because it does not allow for addressing any subject in an even remotely serious or in-depth manner, but may also place the physical safety of the national preventive mechanism team at risk.

60. The Subcommittee recommends that, before deciding to hold a group interview, the national preventive mechanism seriously evaluate the circumstances in which it would be held, the usefulness and relevance of such an interview and the possible security implications.

61. The Subcommittee notes with satisfaction that, during the interviews with persons deprived of their liberty, the national preventive mechanism undertook an in-depth review of the material conditions and the regime applied in the place of detention. However, the Subcommittee is of the view that the national preventive mechanism could also take a closer look at systemic and institutional shortcomings. For example, two of the inmates who were interviewed in the Cotopaxi centre said that their visits had been suspended. Another prisoner in the same centre reported that he had completed his eight-year sentence the previous week but remained deprived of his liberty and had not received any notice of an order for his release. The national preventive mechanism team did not try to ascertain the veracity of those reports, find out what the reasons for these situations were or identify possible solutions.

62. In the view of the Subcommittee, the situations described would merit several follow-up questions and, if possible, a review of the records to corroborate the information and identify possible patterns of violations of the human rights of persons deprived of their liberty. The Subcommittee recommends that the national preventive mechanism use the interviews to take a closer look at structural aspects of the system of deprivation of liberty in order to collect information and thus be in a position to undertake a comprehensive, substantiated analysis of institutional, legal and public policy risk factors.

63. The Subcommittee welcomes the practice of the national preventive mechanism staff of sharing the findings among the team and deciding on priority issues as a group before submitting their comments to the director of the institution concerned.

64. During the visit to the regional centre of Cotopaxi, the Subcommittee noted that the main complaints about material conditions made by persons deprived of their liberty had to do with the lack and quality of drinking water and heating. The Subcommittee wishes to emphasize that, had there been a doctor on the team, he or she could have established whether there was a correlation between these

shortcomings and the incidence of pulmonary and dermatological ailments among persons deprived of their liberty in that centre, which would have served to substantiate the mechanism's findings and recommendations to the authorities. **The Subcommittee wishes to emphasize the importance of ensuring that the national preventive mechanism team is multidisciplinary in nature.**

After the visits

65. The Subcommittee noted with satisfaction that **a report was prepared on each visit to a centre of deprivation of liberty.** The Subcommittee commends the national preventive mechanism for having set up a protocol for the preparation of visit reports which includes deadlines for submission of the reports to the authorities and allows for follow-up visits.

66. **The Subcommittee recommends that the national preventive mechanism intensify its efforts to improve follow-up to its recommendations, in cooperation with the relevant authorities.** The Subcommittee also recommends that the reports submitted to the authorities should emphasize the focus on prevention, which is a central aspect of the national preventive mechanism's mandate. This includes the description of situations which, although seemingly or when taken in isolation do not necessarily constitute torture or ill-treatment, if considered as a whole and sustained over time could easily be regarded as such. In this connection, the Subcommittee recalls that, at the international level, there is no list of behaviours that are considered to amount to torture or ill-treatment. The forms of behaviour in question are so varied and depend to such a great extent on the context in which they take place and the state of vulnerability in which the victims find themselves that it is impossible to define them within more or less rigid categories that could in any way be considered to be exhaustive.

IV. Final recommendations

67. **The Subcommittee invites the national preventive mechanism to keep it informed about the legislative process currently under way in regard to the Office of the Ombudsman Organization Act and about any other significant new developments relating to the national preventive mechanism so that the Subcommittee may continue to assist the mechanism in fulfilling its obligations under the Optional Protocol.**

68. **The Subcommittee is hopeful that its advisory visit and this report mark the beginning of a constructive dialogue with the national preventive mechanism of Ecuador that will contribute to the achievement of the shared objective of preventing torture and other cruel, inhuman or degrading treatment or punishment in places of deprivation of liberty.**

69. **The Subcommittee recommends that the national preventive mechanism make this report public, as it considers that this would in itself constitute a preventive measure, and requests that it be notified of the mechanism's decision in that regard.**

70. **The Subcommittee encourages the national preventive mechanism to review and strengthen its working methods and to conduct ongoing training in order to continue to build its capacity to fulfil its responsibilities under the Optional Protocol.**

71. **The Subcommittee is aware that the national preventive mechanism of Ecuador faces complex challenges at a time of multiple legal, institutional and structural reforms. The Subcommittee nevertheless trusts that the national**

preventive mechanism of Ecuador is up to the task of ensuring that the rights of persons deprived of their liberty are respected and of meeting this enormous challenge in a capable manner.

Annex I

List of senior officials and other persons with whom the Subcommittee met

[Spanish only]

Poder Ejecutivo

- Sra. Ledy Zúñiga, Ministra de Justicia, Derechos Humanos y Cultos
- Sra. Alejandra Jaramillo, Viceministra de Justicia, Derechos Humanos y Cultos
- Sr. Ricardo Bonilla, Representante, Ministerio de Justicia, Derechos Humanos y Cultos
- Sra. Taryn Vélez G., Coordinadora, Ministerio de Justicia, Derechos Humanos y Cultos
- Sra. Lorena Cobo, Representante, Ministerio de Justicia, Derechos Humanos y Cultos
- Sra. Nathaly Olaya, Representante, Ministerio de Justicia, Derechos Humanos y Cultos
- Sra. Isabel Ayora, Asesora, Ministerio de Justicia, Derechos Humanos y Cultos
- Sra. Ana Chamorro, Representante, Ministerio de Justicia, Derechos Humanos y Cultos
- Sra. Consuelo Bowen, Representante, Ministerio de Justicia, Derechos Humanos y Cultos
- Sr. Gustavo Peñamel, Representante, Ministerio de Justicia, Derechos Humanos y Cultos
- Sra. Fernanda Carrillo, Representante, Ministerio de Justicia, Derechos Humanos y Cultos
- Sra. Dalice Pozo, Representante, Ministerio de Justicia, Derechos Humanos y Cultos
- Sra. Gisela Torres, Representante, Ministerio de Justicia, Derechos Humanos y Cultos
- Sra. Julia Elena Godoy, Representante Ministerio de Justicia, Derechos Humanos y Cultos
- Sr. Diego Morejón, Subsecretario de Organismos Internacionales Supra Regionales, Ministerio de Relaciones Exteriores, Comercio e Integración
- Sra. Helena Yáñez, Representante, Cancillería
- Sr. Fabián Santiago Salas Duarte, Teniente Coronel de Estado Mayor, Director Nacional de Asesoría Jurídica
- Sr. Galo Andrade, Representante, Dirección de la Seguridad
- Sr. Milton Guashpa, Representante, Ministerio del Interior
- Sr. Luis Cuzco, Representante, Ministerio del Interior
- Sr. David Crespo, Representante, Ministerio del Interior
- Sr. Wilmer Guayaquil Santamaría, Delegado del Director Nacional de Policía Judicial
- Sr. Fausto Intiguez, Director General de Operaciones, Policía Nacional

Sra. Andrea López, Representante, Ministerio de Relaciones Laborales
Sra. Pamela Aguirre, Representante, Ministerio de Relaciones Laborales
Sra. Aimée Dubois, Secretaria técnica, Salud Mental, Ministerio de Salud Pública
Sra. Ángela León Cáceres, Representante, Ministerio de Salud Pública
Sr. Raúl Silva, Representante, Ministerio de Salud Pública
Sra. Tatiana Medina, Representante, Dirección de Derechos Humanos, Ministerio de Salud Pública
Sr. Carlos Emanuele, Representante, Ministerio de Salud Pública
Sra. Ana Lucía Torres, Subsecretaria, Ministerio de Salud Pública
Sr. Christian Álvarez, Asesor, Ministerio de Salud Pública
Sr. Vinicio Romero, Representante, Ministerio de la Educación
Sra. Paulina Sandoval Alarcón, Directora Jurídica, Consejo Nacional de la Niñez y la Adolescencia (CNNA)
Sra. Ana Cordero Cueva, Representante, Ministerio de Inclusión Económica y Social
Sr. Luis Núñez, Asesor, Ministerio del Deporte

Poder Legislativo

Sra. Dora Aguirre Hidalgo, Presidenta de la Comisión Especializada Permanente de Participación Ciudadana y Control Social de la Asamblea Nacional

Poder Judicial

Sra. Verónica Polit, Representante, Consejo de la Judicatura

Defensoría del Pueblo

Sr. Ramiro Rivadeneira Silva, Defensor
Sr. Patricio Benalcázar, Defensor Adjunto
Sra. María del Cisne Ojeda Rivadeneira, Directora del MNPT
Sr. Christian Bahamonde, Director de Política Pública
Sr. José Luis Guerra, Director Nacional de Protección de Derechos Humanos y de la Naturaleza
Sra. Paulina Salazar, Directora Nacional de Cooperación y Relaciones Internacionales
Sra. Susana del Carmen Caicedo Valladares, Trabajadora Social, MNPT
Sra. Tania Maribel Yáñez Sánchez, Psicóloga Clínica, MNPT
Sra. Viviana Alexandra Calderón Vásquez, Psicóloga Clínica, MNPT
Sr. Lewis Ricardo Cortez Recalde, Analista, MNPT

Organizaciones de la sociedad civil

Fundación Regional de Asesoría en Derechos Humanos (INRHED)
Comisión Ecuémica de Derechos Humanos (CEDHU)
Plataforma Interamericana por los Derechos Humanos

Comité Permanente por la Defensa de los Derechos Humanos

Comité de familiares, amigas y amigos de las personas privadas de libertad

Fundación ecuatoriana Equidad

Servicio Jesuita para Refugiados

The Hebrew Immigrant Aid Society (HIAS)

Asociación Silueta X

Annex II

List of places of deprivation of liberty visited by the Subcommittee

[Spanish only]

Centro de privación de libertad de personas adultas regional Sierra Centro Norte (Cotopaxi), Latacunga

Centro de Detención Provisional de la Policía Nacional, Quito
