



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

Distr.: General

18 January 2011

Original: English

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

### Twelfth session

Geneva, 15–19 November 2010

## Guidelines of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in relation to visits to States parties

### I. Procedure concerning visits

#### Guideline 1 Visits

1. In accordance with the mandate conferred on the Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Subcommittee shall organize visits to places of deprivation of liberty in States parties in order to prevent torture and other cruel, inhuman or degrading treatment or punishment and to strengthen the protection of persons deprived of their liberty against torture and other forms of ill-treatment.

#### Guideline 2 Periodic and follow-up visits

2. The Subcommittee shall carry out visits of a periodic nature to States parties. If the Subcommittee considers it appropriate, it may decide to carry out a short follow-up visit.

#### Guideline 3 Establishment of programme of visits

3. In accordance with article 13 of the Optional Protocol, the Subcommittee shall establish a programme of regular visits to the States parties. The Subcommittee may subsequently modify this programme, in the light of circumstances. At the end of a calendar year, the Bureau shall present to the Subcommittee its suggestion for the countries to be visited the following year, including the timing of the visits and the number of delegates (taking into account the size and complexity of the country and the composition of the delegation) and the Secretariat shall present its suggestions for the number of participating staff.

4. In drawing up this programme, the Subcommittee shall have regard to the provisions of articles 1, 11, paragraph 1 (c), and 31 of the Optional Protocol.

5. The Subcommittee shall, after consultation, notify the States parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted. The Subcommittee shall inform each State party of the information (see guideline 6), the facilities, including the designation of (a) focal point(s) for contact and cooperation with the Subcommittee, and the credentials required to enable the visiting delegation to carry out its tasks.

#### Guideline 4 Visiting delegations

*6. The Subcommittee will designate, for each visit, and in accordance with article 13, paragraph 3, of the Optional Protocol, at least two of its members to conduct the visit, who shall report to the Subcommittee within a time limit which may be set thereby. Each delegation for a regular visit shall comprise at least one lawyer and one medical doctor, and it is intended that members from different forms of civilization and legal systems also be included. In the selection of members, consideration may be given to members' experience working with the country and language skills. Members of the delegation – apart from external experts with specific terms of reference – must be available for the entire visit. In such cases as fall under rule 11, paragraph 1, of the Subcommittee's rules of procedure, the Bureau shall designate the members of the delegation.*

7. The members of the Subcommittee with responsibility for carrying out a visit shall act in the name of the Subcommittee. In consultation with the Bureau, the members of the delegation shall appoint a head of the delegation; if possible, a member who speaks the United Nations language to be used during official meetings.

8. The members designated by the Subcommittee for the visit shall devise their own methods of work in conformity with the provisions of the Optional Protocol, the Subcommittee's rules of procedure and the present guidelines, taking into account the specific focuses of the visit.

9. The Subcommittee may decide that a delegation conducting a visit shall be assisted by one or more experts if they have expertise that is essential for conducting the visit, provided that such expertise does not exist among available members of the Subcommittee. The Subcommittee shall select from the roster established in accordance with article 13, paragraph 3, any expert(s) who is (are) to accompany its delegation on a visit. A delegation shall not be assisted by an expert who is a national of the State party to be visited.

10. The Subcommittee shall be assisted by interpreters sufficient in number to ensure that all delegates can work efficiently with persons deprived of their liberty in the language of the latter.

11. At least one member of the Secretariat shall participate in each visit.

### **Guideline 5 Notification of visits**

12. A programme for intended visits for the upcoming year shall be published by the Subcommittee by the end of each year and States parties to be visited shall be notified through their Permanent Mission in Geneva.

13. A second notification containing the dates of the visit and the names of the members of the visiting delegation shall be communicated to the State party together with requests for information (see guidelines 7 and 8) not later than two months prior to the visit.

14. The notification may indicate some of the places that the delegation intends to visit. This shall not prevent the visiting delegation from visiting other places of detention not indicated in the notification.

### **Guideline 6 Preparation of visits**

15. For the planning and preparation of the visit, the Secretariat shall prepare a compilation and analysis of detailed information concerning the State party to receive the visit. The minimum information requested from the State party and available from other sources should include, but is not limited to:

- (a) Legal information: texts of each State party's current legislation and regulations in areas related to the mandate, including Constitution, Criminal Code, Code of Criminal Procedure, Penal Code, Law on Execution of Penalties and Police Regulations (or equivalents in the individual jurisdictions); these materials, in so far as they are available in the working languages of the Subcommittee, should be provided to the members in the language of their preference;
- (b) Lists of places of deprivation of liberty, official statistical information relating to average annual custodial populations and to the custodial estate, disaggregated by type of custody;
- (c) Information on the legal mandate, terms of reference, funding, appointment, organization and operation of national preventive mechanisms and the annual and other reports thereof;
- (d) Information from United Nations human rights mechanisms, including treaty bodies and special procedure mandate holders working in areas relevant to the Subcommittee's mandate;
- (e) Information from other institutional sources;
- (f) Information concerning the national human rights institutions and other bodies active in areas relevant to the Subcommittee's mandate;
- (g) Information from national human rights institutions concerning key areas falling within the Subcommittee's mandate, including reports of ill-treatment, and the annual report of those institutions from the calendar year prior to the visit of the Subcommittee;
- (h) Information concerning non-governmental organizations (NGOs) and other bodies active in areas relevant to the Subcommittee's mandate;
- (i) Information from NGOs concerning key areas falling within the Subcommittee's mandate, including reports of ill-treatment;
- (j) Communications received by the Subcommittee, including allegations of ill-treatment.

16. Where the key information is available, the head of delegation, in consultation with the Secretariat and other delegates may decide on the focus of the visit and draft a programme for the visit that is presented to the Subcommittee for approval. The programme including the meetings with various authorities and other actors may be subject to change as more information emerges.

### **Guideline 7 Cooperation and facilitation of visits**

17. The Subcommittee and the State parties shall cooperate in the implementation of the Optional Protocol. Further to the requirements of article 12 of the Optional Protocol, the Subcommittee shall request the State party concerned, inter alia:

- (a) To inform the Subcommittee of the authority to which notifications of visits should be addressed and to designate (an) accredited representative(s) (focal point(s)) to meet with the members of the Subcommittee's delegation and facilitate their task;
- (b) To provide members of the visiting delegation with credentials for facilitating the conduct of the visit and the fulfilment of the mandate of the Subcommittee, in accordance with article 12 (a) of the Optional Protocol.

## **Guideline 8 Conduct of visits**

18. In conducting the visit, members of the delegation act on behalf of the Subcommittee and not in their individual capacities.
19. The Subcommittee may decide that one or more members of the delegation should arrive to the country ahead of the remaining members to hold meetings with authorities and other actors. If so decided, that part of the visit is included in the programme of the whole visit and is subject to approval of the Subcommittee.
20. The visiting delegation works as a team under the leadership of the head of delegation or the head of a subgroup, if the delegation divides into such subgroups for the conduct of its work on a visit. Normally, the delegation shall hold meetings on a daily basis to debrief and consider adjustment of the programme in the light of information obtained.
21. If a member of the delegation contravenes the Subcommittee's rules and guidelines and the instructions of the head of delegation, the latter may, in extremely serious cases and in consultation with the Bureau, request the member to leave the delegation.
22. Visits to places of deprivation of liberty shall include discussions and private interviews with staff at various levels as well as with persons deprived of liberty, after having obtained the latter's express informed consent.
23. As a general rule, the Subcommittee considers that photo documentation from places of detention is unnecessary and does not use this modality. Only very exceptionally, when such documentation is regarded essential for the mission, photos may be taken of and in places of detention and only with the express acceptance of the head of delegation.
24. A visiting delegation or subgroup thereof may provide the head or senior management team of a large institution visited, other than a police station, with some preliminary feedback on its visit to that institution; the guiding principle should be to highlight generic and systemic issues rather than to discuss matters related to a specific individual or individuals, who could be identified from the information provided.
25. A visiting delegation may at the end of the visit communicate some of its observations and recommendations to the authorities of the State party concerned, particularly those concerning generic and systemic issues and those concerning urgent needs for protection of persons deprived of their liberty ("preliminary observations"). If relevant, the preliminary observation may be communicated to the national preventive mechanism(s) and the delegation may consider suggesting to the State party that it invite the national preventive mechanism to the reading of the preliminary observations or to other relevant meetings. Normally, the Subcommittee shall submit an edited version of the preliminary observations to the State party shortly after the visit. The delegation may consider inviting NGOs to report to the Subcommittee any observed change in policy and practice in places of detention, particularly those visited by the delegation.
26. The delegation may, with the consent of the person(s) concerned and taking into account the risk of possible reprisals, address the State party about individual cases, if it deems it necessary in order that the State may intervene to avoid irreparable damage to the person(s) concerned.
27. If a delegation encounters obstacles to exercising its mandate, the focal point of the State party shall be contacted forthwith to solve the problem. If the intervention of the focal point does not solve the problem, the delegation may consider meeting with the relevant minister. Where the problem is considered to jeopardize the mission, the delegation may consider suspending the programme until a solution is found or ending the visit; such decisions must involve the Bureau.
28. The Subcommittee may adopt more detailed rules of procedure relating to the conduct of visits, and in particular in relation to follow-up visits, as well as with respect to visits to particular types of establishments, which are or may be used for deprivation of liberty.

## **II. Post-visit procedure**

### **Guideline 9 Report of visits**

29. After each visit, the members of the delegation assisted by the Secretariat shall draft a report for consideration by the Subcommittee's delegation, on the basis of written visit notes delivered by the members thereof and in the light of its observations and findings on the visit. The draft report shall include the facts found during the visit and the recommendations to the State party visited with a view to strengthening the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment.
30. The Subcommittee's delegation shall take into account any comments and information that the State party concerned might submit to it before, during and after a visit. It may at its own initiative request additional information from the State party, the national preventive mechanism(s) and any other relevant bodies which the Subcommittee may choose to address.
31. The final draft of the Subcommittee delegation's visit report shall be agreed by the delegation through a process of consultation, before circulation to the Subcommittee for consideration. The Subcommittee shall adopt each visit report at a plenary session or by e-mail between sessions.
32. The reports on the visits of the Subcommittee are subject to United Nations editing procedures only at the request of the Subcommittee.
33. The adopted visit report shall be transmitted confidentially to the State party concerned under a letter of transmission from the Chairperson on behalf of the Subcommittee. The State party shall be invited to inform the Subcommittee within a stated period of the

action taken to implement its recommendations. The Subcommittee may also, if relevant, confidentially communicate its recommendations and observations or its report to the national preventive mechanism(s).

### **Guideline 10 Consultations**

34. After transmission of the Subcommittee's report, the Subcommittee and the State party concerned may hold consultations with respect to the implementation of any recommendations set out in the report, in accordance with article 12 (d) of the Optional Protocol. Such consultations may also be held with the national preventive mechanism(s).

### **Guideline 11 Follow-up**

35. The response of the State party shall be analysed by Subcommittee members who have participated in the visit and/or by the Bureau or other members appointed by the Bureau or the Subcommittee. The working group formed by those appointed shall draft a reply to the State party, which shall be considered by the Subcommittee. The Subcommittee may decide, on the basis of all information, to undertake a short follow-up visit with terms of reference that are decided by the Subcommittee, in order to continue the dialogue on prevention of torture and ill-treatment with authorities and to verify the state of implementation of some key recommendations.

### **Guideline 12 Publication of the report**

36. The Subcommittee shall publish its report, together with any comments of the State party, whenever requested to do so by that State party. The Subcommittee may publish the report in whole or in part if the State party makes part of the report public, in accordance with article 16, paragraph 2, of the Optional Protocol, or if the State party makes a public statement summarizing the report or commenting upon its content.

### **Guideline 13 Public statements**

37. If the State party refuses to cooperate with the Subcommittee according to articles 12 and 14 of the Optional Protocol, or to take steps to improve the situation in the light of the Subcommittee's recommendations, the Subcommittee may request the Committee against Torture to make a public statement on the matter or to publish the report of the Subcommittee, in accordance with article 16, paragraph 4, of the Optional Protocol. Before a decision to make such a statement is taken, the State party concerned shall be given an opportunity to make its views known.

38. The Subcommittee shall be released from the obligation of confidentiality when a public statement is made.

## **III. Confidentiality**

### **Guideline 14 Confidentiality**

39. Information gathered by the Subcommittee in relation to a visit, its report on that visit prior to the State party requesting publication, and its consultations with the State party concerned and with national preventive mechanisms shall be and shall remain confidential.

40. No personal data shall be published without the express consent of the person concerned.

41. Members of the Subcommittee, experts and other persons accompanying the Subcommittee are required, during and after their terms of office, to uphold the confidentiality of the facts or information of which they have become aware during the discharge of their duties.