



# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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## Committee against Torture

### Seventy-ninth session

15 April–10 May 2024

Item 4 of the annotated provisional agenda

### Organizational and other matters

## Seventeenth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment\*\*

### *Summary*

In the present report, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment describes the work it undertook in 2023.

Following a brief introduction, the Subcommittee provides an update on developments relating to the system of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including its visits, the increase in the number of States parties and designated national preventive mechanisms, and details concerning the operation of the Special Fund established by the Optional Protocol (sect. II).

The Subcommittee also provides substantive information concerning engagement with other bodies in the field of torture prevention (sect. III) and developments in its working practices (sect. IV), and comments on issues it faced when undertaking its work during the year under review.

The Subcommittee concludes the report by considering future challenges (sect. V) and describing its plan of work (sect. VI).

The annexes contain a compilation of advice, guidance and clarifications provided by the Subcommittee in 2023 in response to requests from national preventive mechanisms and States parties and in the context of the Subcommittee's participation in meetings with national preventive mechanisms and other relevant events.

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\*\* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.

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## I. Introduction

1. In accordance with article 16 (3) of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and rule 33 of its rules of procedure, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prepares an annual report on its activities as a public document. The present report covers the Subcommittee's activities from 1 January to 31 December 2023 and was adopted by the Subcommittee during its fifty-second session, which was held from 29 January to 9 February 2024.

## II. Year in review

### A. Participation in the Optional Protocol system

2. As at 31 December 2023, 93 States were parties to the Optional Protocol and 12 States were signatories to it.<sup>1</sup> Côte d'Ivoire acceded to it on 1 March 2023 and Slovakia ratified it on 19 September 2023.

3. The pattern of regional participation was as follows:

African States	24
Asia-Pacific States	13
Eastern European States	21
Latin American and Caribbean States	15
Western European and other States	20

4. The regional breakdown of the 12 signatories that had not yet ratified the instrument was as follows:

African States	8
Asia-Pacific States	1
Eastern European States	0
Latin American and Caribbean States	1
Western European and other States	2

### B. Organizational matters and membership

5. During the reporting period, the Subcommittee held two one-week sessions and one two-week session, all in person, in Geneva: the forty-ninth session (6–10 February 2023); the fiftieth session (5–16 June 2023) and the fifty-first session (6–10 November 2023).

6. The Subcommittee's membership changed during the review period.<sup>2</sup> In accordance with rules 12 and 14 of its rules of procedure, six newly elected members of the Subcommittee – Uju Roselyn Chiemeka Agomoh (Nigeria), Julia Kozma (Austria), Andrew Christoffel Nissen (South Africa), Elīna Šteinerte (Latvia), Anica Tomšić (Croatia) and Victor Zaharia (Republic of Moldova) – assumed duties after taking their solemn oath at the forty-ninth session. Following Marina Langfeldt's resignation, for personal reasons, on

<sup>1</sup> As at 31 December 2023, the 12 signatory States to the Optional Protocol were Angola, Belgium, Cameroon, Chad, the Congo, Guinea, Guinea-Bissau, Ireland, Sierra Leone, Timor-Leste, Venezuela (Bolivarian Republic of) and Zambia. For more information, see [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9-b&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9-b&chapter=4&clang=_en).

<sup>2</sup> See <https://www.ohchr.org/en/treaty-bodies/spt/membership>.

31 October 2022, Martin Zinkler (Germany), her replacement under article 8 of the Optional Protocol, also took his oath during that session.

7. At its forty-ninth session, the Subcommittee re-elected Suzanne Jabbour as Chair and the following members as Vice-Chairs and members of the Bureau: Carmen Comas-Mata Mira (Vice-Chair for visits); Daniel Fink (Vice-Chair for external relations); and Aisha Shujune Muhammad (Vice-Chair for national preventive mechanisms). María Luisa Romero was elected as Vice-Chair and member of the Bureau (Rapporteur). All Bureau terms last two years. Jakub Julian Czepek was designated by the Subcommittee as Rapporteur for reprisals for a two-year term.

8. Membership changes occurred in the regional teams and standing working groups. As at 31 December 2023, the heads of the regional teams were Abdallah Ounnir for Africa, Nika Kvaratskhelia for Asia and the Pacific, Vasiliki Artinopoulou for Europe and Marco Feoli Villalobos for the Americas. Juan Pablo Vegas was the head of the regional team for the Americas until the fifty-first session and Ms. Romero was the head of the European regional team until the forty-ninth session. Details of the composition of the regional teams are available on the Subcommittee's website.<sup>3</sup> The regional teams met at the forty-ninth, fiftieth and fifty-first sessions to examine the progress of the implementation of the Optional Protocol in their regions, reporting to the Subcommittee in plenary session, and made recommendations as appropriate.

9. As at 31 December 2023, the heads of the permanent working groups, on jurisprudence, on the health aspects of torture prevention and on the Special Fund established by the Optional Protocol, were Ms. Romero, Marie Brasholt and Ms. Jabbour, respectively. The working groups on jurisprudence and on the health aspects of torture prevention met at all sessions in the period under review. The working group on the Special Fund established by the Optional Protocol met during the forty-ninth and fiftieth sessions.

10. At the forty-ninth session, the regional teams met without interpretation and the working groups met during the plenary. The Subcommittee hosted a public conference commemorating the twentieth anniversary of the Optional Protocol and the fifteenth anniversary of the Subcommittee in which States parties, national preventive mechanisms, non-governmental organizations (NGOs) and others participated. In addition, meetings were held with the Finance and Budget Section of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and various stakeholders, including the Association for the Prevention of Torture.

11. At the fiftieth session, the regional teams met without interpretation and conducted their annual regional meetings with national preventive mechanisms; the working groups met with interpretation. The Subcommittee held an informal public meeting with States parties, attended by 32 parties and signatories.<sup>4</sup> During this meeting, the Subcommittee explained its work, activities and challenges, including the lack of resources, and emphasized its engagement in the treaty body strengthening process; State party representatives took the floor to ask questions or clarifications as needed. The Subcommittee met again with the Finance and Budget Section of OHCHR and the Association for the Prevention of Torture, as well as with other stakeholders, including the Bureau of the Global Alliance of National Human Rights Institutions and the United Against Torture Consortium.

12. At the same session, the Subcommittee held a day of general discussion on its draft general comment on the definition of deprivation of liberty (article 4 of the Optional Protocol) and provided training to all members on interviewing persons deprived of liberty, as part of the continuous training of members.

13. During the fifty-first session, the Subcommittee held a joint meeting with the Committee against Torture to discuss issues of common interest, exchange experiences and lessons learned and strengthen cooperation between the two bodies. It also met with other stakeholders, including the Association for the Prevention of Torture and the United Against Torture Consortium.

<sup>3</sup> See <https://www.ohchr.org/en/treaty-bodies/spt/regional-teams>.

<sup>4</sup> See <https://webtv.un.org/en/asset/k18/k18ulkqk60>.

14. At the same session, the Subcommittee conducted a training session for its members focusing on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

### C. Visits conducted during the reporting period

15. In line with its mandate under articles 11 and 13 of the Optional Protocol, the Subcommittee conducted eight visits in 2023: South Africa (26 February to 9 March), Kazakhstan (26 March to 1 April), Madagascar (16 to 27 April), Croatia (2 to 8 July), State of Palestine (10 to 21 September), Georgia (8 to 14 October), Guatemala (8 to 19 October) and Philippines (3 to 14 December).<sup>5</sup>

16. During its visits, the Subcommittee conducted over 1,100 individual and collective interviews with more than 3,500 persons. Most interviews were with persons deprived of their liberty; the Subcommittee also interviewed officials, law enforcement personnel and medical staff. It visited more than 170 places of deprivation of liberty: 72 prisons (including 14 detention facilities for women), 54 police stations, 18 detention centres for children, 8 remand interrogation facilities, 7 psychiatric and health-care institutions, 6 closed centres for undocumented migrants, 4 drug rehabilitation centres, 4 closed religious centres, 3 military facilities, 1 court holding cell and 1 social care facility.

17. Following each visit, information is made available in press releases.<sup>6</sup> After visiting South Africa, the Subcommittee called for the establishment of a national preventive mechanism to comply with the Optional Protocol. It noted the overuse of deprivation of liberty across various sectors, reflecting a punitive approach to crime and other social issues.<sup>7</sup> Following the visit to Kazakhstan, the Subcommittee called for action to protect people deprived of their liberty from torture and ill-treatment and to strengthen the national preventive mechanism's mandate.<sup>8</sup> In Madagascar, extreme overcrowding in prisons raised alarm and the Subcommittee highlighted the need for a functional national preventive mechanism.<sup>9</sup> After visiting Croatia, the Subcommittee welcomed improvements in detention conditions but recommended that the State party reduce prison overcrowding.<sup>10</sup> Following the visit to the State of Palestine, the Subcommittee highlighted the need to improve the effectiveness of the fundamental legal safeguards against torture and ill-treatment, including through the establishment of a national preventive mechanism.<sup>11</sup> After the visit to Georgia, the Subcommittee noted the need to take measures to continue reducing overcrowding and to modernize prisons.<sup>12</sup> With regard to Guatemala, the Subcommittee expressed concerns about prison conditions and the need to modernize the criminal justice system.<sup>13</sup> After the visit to the Philippines, given the magnitude of issues observed, the Subcommittee called for the urgent designation of a national torture prevention body.<sup>14</sup>

18. Following one of its visits in 2023, the Subcommittee received an allegation of reprisals, specifically concerning negative consequences faced by a person deprived of liberty

<sup>5</sup> See <https://www.ohchr.org/en/treaty-bodies/spt/visits>.

<sup>6</sup> See <https://www.ohchr.org/en/treaty-bodies/spt>.

<sup>7</sup> See <https://www.ohchr.org/en/press-releases/2023/03/south-africa-must-fully-comply-international-obligations-prevent-torture>.

<sup>8</sup> See <https://www.ohchr.org/en/press-releases/2023/04/kazakhstan-needs-strengthen-effective-torture-prevention-measures-un-torture>.

<sup>9</sup> See <https://www.ohchr.org/en/press-releases/2023/05/madagascar-extreme-prison-overcrowding-needs-urgent-fix-un-experts>.

<sup>10</sup> See <https://www.ohchr.org/en/press-releases/2023/07/croatias-detention-facilities-spotlight-un-torture-prevention-body-concludes>.

<sup>11</sup> See <https://www.ohchr.org/en/press-releases/2023/09/palestine-must-strengthen-torture-prevention-measures-un-body-finds>.

<sup>12</sup> See <https://www.ohchr.org/en/press-releases/2023/10/georgia-prison-system-needs-modernisation-says-un-torture-prevention-body>.

<sup>13</sup> See <https://www.ohchr.org/en/press-releases/2023/10/guatemala-despite-political-turmoil-torture-prevention-measures-must-be>.

<sup>14</sup> See <https://www.ohchr.org/en/press-releases/2023/12/philippines-dire-need-national-torture-prevention-body-say-un-experts>.

after speaking to the Subcommittee delegation. The issue was raised with the State party through formal correspondence and a meeting with a representative of its permanent mission in Geneva. The State party was asked for further information, in particular concerning investigative actions, the status and health care of the individual and protective measures against further reprisals. In line with the absolute prohibition in article 15 of the Optional Protocol of any sanction or reprisal, from all sources, the Subcommittee treats such allegations seriously and requests the same from all States parties. Dialogue regarding the case will continue with the State party.

#### D. Visit reports

19. In line with article 16 of the Optional Protocol, the substantive aspects arising from the Subcommittee's visits are confidential. Reports are made public only at the request of the visited State party.<sup>15</sup> By 31 December 2023, 82 visit reports had been transmitted to States parties by the Subcommittee, including 8 during the reporting period, to Australia, Bosnia and Herzegovina, Ecuador, Lebanon, Madagascar, Tunisia, Türkiye and South Africa.

20. Of the 82 visit reports to State parties, 52 had been made public by 31 December 2023, at the request of States parties pursuant to article 16 (2) of the Optional Protocol, including 4 during the reporting period, namely those on the visits to Argentina (2022),<sup>16</sup> Australia (2022)<sup>17</sup> and Liberia (2011<sup>18</sup> and 2018<sup>19</sup>). While fully respecting the principle of and right to confidentiality provided for in the Optional Protocol, the Subcommittee welcomes the publication of its visit reports, as it reflects the spirit of transparency on which preventive visiting is based, facilitates better implementation of the respective recommendations and allows other States parties and national preventive mechanisms to learn from each other's practices, challenges and progress in torture prevention. The Subcommittee urges the 25 States parties that have received visit reports since its first visit, in 2007, and had not requested their publication by the end of 2023<sup>20</sup> to do so in the spirit of transparency and because the dissemination of the Subcommittee's recommendations constitutes a positive contribution to the prevention of torture and cruel, inhuman and degrading treatment. The Subcommittee would also like to recall that States that have requested publication of their visit reports gain access to the Special Fund established by the Optional Protocol, an important resource that supports the implementation of the Optional Protocol through the financing of projects to help States implement the Subcommittee's recommendations following its visits. The Fund demonstrates the continued commitment of the United Nations to accompanying and supporting States' efforts to implement the Subcommittee's recommendations.

21. In line with established practice, recipients of reports are requested to submit a written reply within six months of the transmission thereof, giving a full account of the actions taken and that will be taken to implement the Subcommittee's recommendations. In the reporting period, the Subcommittee received four replies, from Argentina, Australia, Burkina Faso and

<sup>15</sup> Data concerning visit reports, including those that have been made public, are available at [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/CountryVisits.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/CountryVisits.aspx).

<sup>16</sup> [CAT/OP/ARG/ROSP/1](#).

<sup>17</sup> [CAT/OP/AUS/ROSP/1](#).

<sup>18</sup> [CAT/OP/LBR/1](#).

<sup>19</sup> [CAT/OP/LBR/ROSP/1](#).

<sup>20</sup> The reports correspond to the following visits: Mauritius (2007), Cambodia (2009), Lebanon (2010), Plurinational State of Bolivia (2010), Honduras (2012), Senegal (2012), Cambodia (2013), Ecuador (2014), Nigeria (2014), Azerbaijan (2015), Guatemala (2015), Nauru (2015), Philippines (2015), Mozambique (2016), Mauritania (2016), Tunisia (2016), Hungary (2017), Morocco (2017), Kyrgyzstan (2018), Sri Lanka (2019), Cabo Verde (2019), Ghana (2019), Senegal (2019), Lebanon (2022) and Tunisia (2022). For more information, see [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/CountryVisits.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/CountryVisits.aspx). Reports had been sent to five States parties by the end of the reporting period but the deadline to respond to the Subcommittee was in 2024, so they are not included in this list. Those reports correspond to the following visits: Bosnia and Herzegovina (2022), Ecuador (2022), Türkiye (2022), Madagascar (2023) and South Africa (2023).

Senegal, Argentina,<sup>21</sup> Australia<sup>22</sup> and Burkina Faso<sup>23</sup> requested that their responses be made public.

22. As at 31 December 2023, 49 replies to Subcommittee reports had been received from States parties, with 37 of them made public. In the spirit of cooperation under the Optional Protocol, the Subcommittee encourages all States parties to reply promptly to its visit reports in order to engage in constructive dialogue on the implementation of its recommendations. It also encourages States parties to request that their response be made public, as a preventive tool in itself and in the spirit of transparency. Information on Subcommittee reports and replies is available on its website.<sup>24</sup>

23. In accordance with the Subcommittee's consolidated practice and in the spirit of the ongoing and constructive dialogue with States parties that is at the centre of the Optional Protocol system, following the receipt of the State party's reply, the Subcommittee and the State party concerned continue the dialogue on the implementation of the recommendations, in accordance with article 12 (d) of the Optional Protocol.

24. During the reporting period, the Subcommittee continued to implement the decision, taken at its forty-fifth session and applied from 2020, not to request that reports to national preventive mechanisms be made public. This reinforces the privileged communication between the Subcommittee and national preventive mechanisms. However, as with States parties, the Subcommittee expects a reply from all national preventive mechanisms to ensure ongoing dialogue.

## **E. Developments concerning national preventive mechanisms**

25. The Subcommittee maintains a dialogue with States parties and signatories, both at and between its sessions, concerning the designation or functioning of their national preventive mechanisms and other relevant issues. In accordance with its mandate under article 11 (b) (i) and (ii) of the Optional Protocol, the Subcommittee established and maintained direct contact with national preventive mechanisms, both during and between sessions. During the reporting period, the Subcommittee provided guidance, advice and clarifications to national preventive mechanisms and States parties on the provisions of the Optional Protocol and the application of a preventive approach to specific situations. As such information is of general interest, it has been reproduced in the annexes to the present report.

### **1. Annual meetings with national preventive mechanisms**

26. During its fiftieth session, the regional groups held their annual online meetings with the national preventive mechanisms of their respective regions. Details of those meetings are set out below.

#### *Regional team for Africa*

27. The regional team for Africa met with representatives of several national preventive mechanisms from the region to engage in dialogue regarding their operation and effectiveness, as well as challenges faced. Financial constraints emerged as a primary concern: the lack of a specific budget and the inadequacy of their budgets prevent national preventive mechanisms from fulfilling their mandate. Financial challenges have negative impacts on human resources, the use of external experts, and equipment and logistics. Some national preventive mechanisms are also tasked with responsibilities outside their preventive mandate, and the lack of resources prevents them from adequately fulfilling their mandate as set out in the Optional Protocol. The Subcommittee reminded the national preventive mechanisms of the importance of aligning their mission with the mandate established in the Optional

<sup>21</sup> See [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FOP%2FARG%2FCSPRO%2FR.1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FOP%2FARG%2FCSPRO%2FR.1&Lang=en).

<sup>22</sup> [CAT/OP/AUS/CSPRO/1](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/OP/AUS/CSPRO/1).

<sup>23</sup> [CAT/OP/BFA/CSPRO/1](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/OP/BFA/CSPRO/1).

<sup>24</sup> [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/CountryVisits.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/CountryVisits.aspx).

Protocol, which is of a preventive nature and implies distinguishing between preventive work and the handling of individual complaints.

*Regional team for the Americas*

28. The regional team for the Americas organized an online meeting with representatives of national preventive mechanisms of the region regarding migrants in detention, in collaboration with the Center for Justice and International Law. The discussion included a theoretical analysis of deprivation of liberty in the context of migration, based on the idea that migrants generally find themselves in more vulnerable situations than non-migrants, maintained by both de jure (legislative) inequalities and de facto (structural) inequalities. It was emphasized that, as a general rule, pregnant women, nursing mothers and children should not be detained and that any form of detention of migrants should be a measure of last resort based on an individual assessment of the need to detain, and only in pursuit of a legitimate and proportional aim as established by international law, with periodic review of the continued necessity of detention. Representatives of national preventive mechanisms stressed the importance of several factors when monitoring the situation of migrants deprived of their liberty, such as the need for initial and regular assessments of physical and mental state, access to medical care, ensuring that language barriers are overcome, and preserving family unity.

*Regional team for Asia and the Pacific*

29. The regional team for Asia and the Pacific held a meeting to facilitate a peer exchange of experiences between the national preventive mechanisms, which provided information on their work and the challenges faced. The regional team answered questions raised by representatives of national preventive mechanisms. Specific issues were to be followed up bilaterally by the relevant country rapporteurs. The issues discussed during the meeting included the allocation of resources and strategic planning, access to places of deprivation of liberty, capacity-building for members of national preventive mechanisms, and follow-up to recommendations to national preventive mechanisms.

*Regional team for Europe*

30. The online meeting with representatives of national preventive mechanisms convened by the regional team for Europe was aimed at exploring how the mechanisms implement the Optional Protocol's approach to torture prevention, based on the exchange of experience, views and practices. The webinar was focused on two key issues: (a) strategies of the mechanisms in the prevention and protection of any forms of reprisals; and (b) enhancing the capacity of the mechanisms to effectively monitor the implementation of the Subcommittee's recommendations. Representatives of 29 mechanisms from the region took part in the exchange, with presentations by 13 of them. More information on the discussion is included in annex II to the present report.

## **2. Subcommittee's involvement in meetings related to national preventive mechanisms**

31. The Subcommittee continued to receive invitations to attend numerous national, regional and international meetings concerning the designation, establishment and development of national preventive mechanisms, on the effective discharge of their mandates in particular and on the Optional Protocol in general. The Subcommittee is grateful to the organizers of all events to which it has been invited.

32. From 6 to 8 November 2023, the Subcommittee participated in the Fourteenth International Conference of Human Rights Institutions, organized by the Global Alliance of National Human Rights Institutions and held in Copenhagen. Discussions covered topics of great relevance to the Subcommittee's work, including the relationship between national preventive mechanisms and national human rights institutions. The position shared by the Subcommittee at the conference is included in annex III to the present report for the benefit of all national preventive mechanisms and States parties, including those in the process of establishing their national preventive mechanisms.

33. From 22 to 24 November 2023, at the invitation of the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE), the Subcommittee participated in an in situ dialogue in Bratislava, following the ratification by Slovakia of the Optional Protocol on 19 September 2023. Notably, although the State party established a national preventive mechanism in March 2023, it had not formally notified the Subcommittee of this at the time of the in situ dialogue. However, in order to advise on the preventive mandate of the mechanism and the country's obligations under the Optional Protocol, the Subcommittee met with staff of the mechanism, the heads of the three institutions that compose it (the Public Defender of Rights, the Commissioner for Persons with Disabilities and the Commissioner for Children), a civil society representative and representatives from the Ministry of Justice, the Ministry of the Interior, the Ministry of Health and the Ministry of Labour, Social Affairs and Family.

34. The Subcommittee welcomed the opportunity to participate in an international conference organized in Dublin by the Office of the Inspector of Prisons of Ireland on 6 December 2023. The Subcommittee shared its views on various important issues surrounding the establishment of an effective national preventive mechanism, while at the same time encouraging the authorities of Ireland, a signatory State, to move forward with the ratification of the Optional Protocol.

## **F. Substantial non-compliance with article 17**

35. At its twenty-seventh session, the Subcommittee decided to identify States parties whose establishment of a national preventive mechanism was substantially overdue and to record them on a list.<sup>25</sup> The list is revised at each session of the Subcommittee, and States parties are removed from the list once the threshold for such removal is met, namely that the Subcommittee has received notification of the official designation of the national preventive mechanism and copies of the documentation providing for its establishment and effective functioning.

36. In order to clarify the criteria for determining whether a national preventive mechanism has been maintained, designated or established, as appropriate, under article 17 of the Optional Protocol, and for removing a State party from the above-mentioned list, the Subcommittee has set out on its website<sup>26</sup> the elements that a State party has to include in the note verbale addressed to the Subcommittee; those elements were made public in 2022.

37. No national preventive mechanisms were established during 2023, but indications were received from some States parties that some would be in the near future, which the Subcommittee noted with satisfaction. As at 31 December 2023, the following 15 States parties were on the list of those not in compliance with article 17, after Afghanistan was added to the list at the Subcommittee's fifty-first session: Afghanistan, Belize, Benin, Bosnia and Herzegovina, Burundi, Central African Republic, Democratic Republic of the Congo, Gabon, Ghana, Liberia, Nauru, Nigeria, Philippines, South Sudan and State of Palestine. It remains a matter of the utmost concern to the Subcommittee that some of the States parties on the list still appear to be making little if any progress towards fulfilling their obligations and are long overdue with the establishment of their national preventive mechanism.

38. In this regard, the Subcommittee emphasizes that establishing the national preventive mechanism and affording it the requisite mandate is a core obligation that every State party to the Optional Protocol must undertake. It is also a crucial step to further State parties' obligations, under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to prevent acts of torture and other ill-treatment. The Subcommittee stands ready to advise and assist all States parties, in particular those included on the above-mentioned list, in their endeavours to fully implement their obligations regarding the establishment of their national preventive mechanism in accordance with the Optional Protocol.

<sup>25</sup> See <https://www.ohchr.org/en/treaty-bodies/spt/non-compliance-article-17>.

<sup>26</sup> Ibid.

## G. Special Fund established by the Optional Protocol

39. Support provided through the Special Fund established under article 26 (1) of the Optional Protocol is directed towards projects aimed at establishing or strengthening national preventive mechanisms, thereby contributing to the implementation of the relevant recommendations made by the Subcommittee following a visit to a State party. Projects can also be submitted by national preventive mechanisms, independently of a Subcommittee visit, to support their educational programmes. In 2023, grants amounting to \$384,063 were awarded through the Special Fund to support 14 torture-prevention projects in 12 States parties during their implementation in 2024. The Subcommittee has assisted in the assessment of project proposals and recommendations for grants.

40. Proposals for projects in Burkina Faso, Gabon and Togo were submitted as a follow-up to the OHCHR regional conference on torture prevention held in Dakar on 17 and 18 January 2023. In line with the recommendations made at the conference, the projects will support the establishment or strengthening of national preventive mechanisms in compliance with the Optional Protocol, including through the drafting of legislative decrees, capacity-building of mechanism members, training of judges and law enforcement officers, increasing the visibility of mechanisms and conducting thematic visits to women's prisons to address prevention of torture and ill-treatment. More submissions are expected from States that are substantially overdue with the establishment of their mechanisms and therefore not compliant with article 17 of the Optional Protocol.

41. The Subcommittee greatly appreciates the contributions made by Czechia (\$9,276) and Denmark (\$143,287) to the Special Fund during the reporting period. Nevertheless, it remains mindful that further contributions are urgently needed to support projects during the 2024/25 grant cycle and beyond. The Special Fund is an essential tool for supporting and complementing the implementation of the Subcommittee's recommendations aimed at the prevention of torture and ill-treatment; the Subcommittee therefore urges States to discharge their responsibility as States parties of the Optional Protocol and provide the Special Fund with the financial support it requires as soon as possible.

## H. Draft general comment

42. The Subcommittee continued its work on the drafting of its general comment on article 4 of the Optional Protocol. The Subcommittee invited all interested parties to comment on the first public draft and it received 68 submissions from various stakeholders, including States parties, national preventive mechanisms, United Nations bodies and mechanisms, regional organizations, representatives of academies and universities, and international and local civil society organizations. During its fiftieth session, the Subcommittee held a public discussion on the draft, during which over 30 different stakeholders took the floor to provide input. The programme of the public discussion is available on the website of the Subcommittee;<sup>27</sup> the recording of the live broadcast of the public meeting is also available, in three languages, on the website of the United Nations.<sup>28</sup>

43. During the discussion, various issues were raised, such as the need to keep the term "places of deprivation of liberty" broad and non-exhaustive so that the Optional Protocol remains a living instrument. The need to include social care institutions and centres for asylum-seekers and migrants in the understanding of the term was highlighted by several speakers. The clarification that being deprived of liberty should be understood as not being permitted to leave at will was acknowledged by participants. Several speakers suggested other places and circumstances that should also be covered by the term, such as places of transport or transit in airports or border areas, disability-specific places of detention, schools, drug treatment centres, house arrest situations and digital and other non-physical spaces.

<sup>27</sup> See [https://www.ohchr.org/sites/default/files/documents/hrbodies/spt-opcat/Programme-work-on-the-draft-GC.art\\_4.pdf](https://www.ohchr.org/sites/default/files/documents/hrbodies/spt-opcat/Programme-work-on-the-draft-GC.art_4.pdf).

<sup>28</sup> See <https://webtv.un.org/en/asset/k18/k18ah5tr4u>.

44. Some participants underlined the importance of focusing on places where vulnerable groups, in particular children and people with disabilities, are deprived of liberty. The question of jurisdiction or control of the State, in particular regarding extraterritoriality and non-State actors, was also considered. Moreover, discussions were held on the requirements for implementing article 4, which included the independence and effectiveness of national preventive mechanisms, the removal of exclusions and objections by States parties with regard to visits to certain places or persons and the importance of accessing, without exception, all places of detention and those that are not strictly speaking places of deprivation of liberty, but where individuals may still be deprived of their liberty.

45. On the basis of the information provided in the submissions and during the discussion, the Subcommittee drew up a list of important issues to be included in the second draft of the general comment and commenced incorporating them, as discussed in plenary during the fifty-first session. The Subcommittee also conducted further editorial work on the draft. The process will be continued during the fifty-second session of the Subcommittee, during which a second draft will be presented to the plenary.

## **I. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)**

46. As part of the editorial committee, the Subcommittee had a key role in the process leading up to the launch of the updated version of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) in 2022. The updated version represents an important standard that is consistently referred to in the Subcommittee's recommendations following country visits and also in its discussions with national preventive mechanisms. It also provides a solid basis for improved recommendations, and the Subcommittee therefore considered it important to have a training session on it for its members in its fifty-first session.

47. During the training session, an overview of the Istanbul Protocol was provided, and a detailed introduction was given to the two new chapters and the updated annexes. The new chapter 8 is particularly relevant as it provides specific guidance to States on how to implement the Optional Protocol. During the training session, the type and interpretation of physical and psychological findings following torture and how such findings could be described was emphasized. That topic is highly relevant for members for their visits to places of detention. How to assess and describe the consistency between the history and the findings was also covered during the session. The training session will form the basis for ongoing discussions in the Subcommittee on how to continue to best include the Istanbul Protocol in its work.

## **J. Conference to mark the twentieth anniversary of the Optional Protocol and the fifteenth anniversary of the Subcommittee**

48. The twentieth anniversary of the Optional Protocol and the fifteenth anniversary of the Subcommittee were marked with a conference held in Geneva, in a hybrid format, on 9 February 2023. The Deputy High Commissioner for Human Rights made an opening statement. Three panel discussions were held, with the panels composed of representatives of various stakeholders, including States parties, national preventive mechanisms, regional bodies and NGOs, as well as former members of the Subcommittee. During the closing session, representatives of Switzerland, the Committee against Torture, the United Nations Voluntary Fund for Victims of Torture and the International Committee of the Red Cross, as well as the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Chair of the Subcommittee, made statements. The conference was attended in person by well over 100 participants, including representatives of States parties, national preventive mechanisms, civil society and academia, and online by over 100 participants, representing all continents.

49. The Subcommittee expresses its gratitude to all moderators, speakers and in-person participants, as well as to the participants from all over the world who attended the event online. The programme and the flyer are available on the website of the Subcommittee;<sup>29</sup> the recording of the conference, held as a public meeting and broadcast live in three languages, is available on the website of the United Nations.<sup>30</sup>

### III. Engagement with other bodies in the field of torture prevention

#### A. International cooperation

##### 1. Cooperation with other United Nations bodies

50. The Chair of the Subcommittee presented, on 1 May 2023, the sixteenth annual report of the Subcommittee<sup>31</sup> to, and discussed it with, the Committee against Torture in plenary session at the Committee's seventy-sixth session, which was held in Geneva from 17 April to 12 May 2022.

51. In accordance with General Assembly resolution 70/146, the Chair of the Subcommittee, together with the Chair of the Committee against Torture and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, presented the sixteenth annual report of the Subcommittee to the Assembly at its seventy-eighth session.<sup>32</sup>

52. During the year, the Chair of the Subcommittee participated in several informal online meetings of the Chairs of the human rights treaty bodies and represented the Subcommittee at the thirty-fifth meeting of the Chairs of human rights treaty bodies, held from 29 May to 3 June 2023 in New York. In the context of the treaty body strengthening process, the Chairs agreed to establish a predictable schedule for reviewing reports of States parties in compliance with human rights treaty obligations, with an eight-year cycle for full reviews, combined with follow-up reviews during the cycle, for the eight treaty bodies that had periodic reviews. Similarly, the Subcommittee, which has a visiting mandate, will visit States parties, on average, every eight years, with a cyclic dialogue between visits, in accordance with the relevant statement adopted by the Subcommittee.<sup>33</sup>

53. On 26 June, the United Nations International Day in Support of Victims of Torture, the Subcommittee, the Committee against Torture and the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture issued a joint statement calling for States to uphold an absolute prohibition of torture in armed conflict.<sup>34</sup> The human rights experts emphasized in the statement that the prohibition against torture was a *jus cogens* norm of international law, a fundamental principle that applied at all times and in all circumstances and to all parties to a conflict. In the statement, the Chair of the Subcommittee urged States to ensure that, also in situations of armed conflict, all possible measures were taken to allow national preventive mechanisms and other detention monitoring bodies continued access and monitoring to all places of deprivation of liberty. She called upon non-State actors to facilitate similar access, stressing that the prevention of torture was a must in all circumstances and in the interest of all parties to a conflict.

54. The Subcommittee continued to cooperate systematically with other mechanisms, including by transmitting to the Committee against Torture, for its consideration, suggestions

<sup>29</sup> See <https://www.ohchr.org/en/events/events/2023/twentieth-anniversary-opcat-and-fifteenth-anniversary-spt>.

<sup>30</sup> See <https://webtv.un.org/en/asset/k1n/k1nqjbcno>.

<sup>31</sup> CAT/C/76/2.

<sup>32</sup> See <https://www.ohchr.org/en/statements/2022/10/chairperson-subcommittee-prevention-tortures-statement-77th-ga-session>.

<sup>33</sup> CAT/C/73/2, annex.

<sup>34</sup> See <https://www.ohchr.org/en/statements/2023/06/un-experts-call-states-uphold-absolute-prohibition-torture-armed-conflict>.

regarding States parties to the Optional Protocol, the reports of which were to be considered at forthcoming sessions of the Committee, and issues for the Committee to consider raising with States parties under the simplified reporting procedure.

55. During its fifty-first session, the Subcommittee met with the Committee against Torture to discuss challenges common to both mandates and mutual recognition of key concerns and recommendations to States parties in their work, be it during country visits, in visit reports or during the examination of State party reports. Both bodies expressed commitment to further strengthening their cooperation, with due consideration of the principle of confidentiality under the Optional Protocol.

56. The Subcommittee continued its cooperation with the regional offices of OHCHR, United Nations country teams and the Office of the United Nations High Commissioner for Refugees.

57. The Subcommittee also continued to cooperate with the treaty body capacity-building programme, in particular in support of the work of national preventive mechanisms.

## **2. Cooperation with other relevant international organizations**

58. The Subcommittee continued its cooperation with the International Committee of the Red Cross, a representative of which participated as a keynote speaker in the public general discussion on the Subcommittee's draft general comment, as well as in the conference marking the anniversaries of the Optional Protocol and the Subcommittee.

## **B. Regional cooperation**

59. The Subcommittee continued its cooperation with regional organizations, including the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, building on the reciprocal exchange of letters to give effect to article 31 of the Optional Protocol in order to strengthen complementarity and subsidiarity. Several meetings were held at the levels of the Chairs and of the secretariat.

60. The Subcommittee carried out joint activities with the Office for Democratic Institutions and Human Rights of OSCE within its mandate to cooperate with relevant regional institutions working towards the strengthening of the protection of all persons against torture and ill-treatment (art. 11 (1) (c) of the Optional Protocol). It was in this context that the Subcommittee participated in the in situ dialogue in Slovakia, coordinated by the Office for Democratic Institutions and Human Rights.

## **C. Cooperation with civil society and other stakeholders**

61. The Subcommittee continued to benefit significantly from the support of civil society, including the Association for the Prevention of Torture, the United Against Torture Consortium and a number of academic institutions. The Subcommittee received valuable information from its contact with both national and international civil society organizations before and during visits, and it thanks those organizations for promoting and supporting the Optional Protocol.

## **IV. Developments relating to working practices**

### **A. Visits for 2024**

62. At its fiftieth and fifty-first sessions, the Subcommittee discussed the priorities of the visiting programme in the light of the situation in each State party that has ratified the Optional Protocol. The following list of States parties to be visited in 2024 was made public:

Albania, Bolivia (Plurinational State of), Democratic Republic of the Congo, Gabon, Greece, Honduras, Mongolia and Nigeria.<sup>35</sup>

63. The Subcommittee continues to underline the point it made in its eleventh annual report,<sup>36</sup> namely, that the inability of the Subcommittee to undertake a minimum of 12 visits per year, in line with the statement adopted at its forty-sixth session,<sup>37</sup> is a serious impediment to the full and effective implementation of the preventive mandate as set out in the Optional Protocol and undermines the proactive nature of the system of prevention that it establishes. It is imperative that the Subcommittee be allocated the resources necessary to enable it to have a secretariat of adequate size and to resume its full visiting programme.

## B. Meeting time

64. The forty-ninth and fifty-first sessions were each one week in duration. The fiftieth session marked the second time that the Subcommittee met for two weeks.

## V. Looking forward

65. The conference to commemorate the anniversaries of the Optional Protocol and the Subcommittee provided an important opportunity to recall the fundamental principles of the Optional Protocol and the strengthening of the ties of cooperation among the Subcommittee, States parties, national preventive mechanisms and civil society. It was also a time to recall the need for States parties to honour their financial commitments to the United Nations to make it possible for the human rights treaty bodies to fulfil their mandate.

66. The Subcommittee established its programme of visits for 2024, envisaged in line with the requirements set by the Optional Protocol, reflecting the rigorousness of the Subcommittee's work and the needs of the States parties and national preventive mechanisms, in the spirit of cooperation with and between States parties and national preventive mechanisms.

67. Visits to places of deprivation of liberty constitute the foundation of the Optional Protocol. It must be recalled that visits by the Subcommittee can only take place in person, with face-to-face interviews of persons deprived of their liberty and other stakeholders, as well as effective dialogue with the State party in question. The Subcommittee will therefore spare no effort, and will use all means possible, to follow through with its programme of visits, despite the obstacles resulting from shortfalls in resources and requests from States parties to postpone visits. In this situation, the Subcommittee is indebted to national preventive mechanisms for the discharge of their preventive mandate, as the resources put at the disposal of the Subcommittee are inadequate to enable it to undertake the number of visits it considers necessary for the effective discharge of its mandate as envisaged in the Optional Protocol. The twentieth anniversary of the Optional Protocol is an opportune moment for the Subcommittee to implore all States parties to ensure that the requisite financial and human resources are put at the disposal of the Subcommittee to enable it to effectively discharge the mandate with which it is vested under the Optional Protocol. In addition, States parties are encouraged to provide support through donations to the Special Fund established by the Optional Protocol.

68. The Subcommittee has continued to be active in the current phase of the treaty body strengthening process. It will continue working with other treaty bodies to achieve the support of States parties for including the conclusions of the meetings of the Chairs of the human rights treaty bodies in the next General Assembly resolution on the human rights treaty body system, scheduled for December 2024, and obtaining the human, technical and financial resources necessary for such implementation. The Subcommittee is actively contributing to

<sup>35</sup> See <https://www.ohchr.org/en/press-releases/2023/11/un-torture-prevention-body-plans-visit-democratic-republic-congo-greece> and <https://www.ohchr.org/en/press-releases/2023/07/un-torture-prevention-body-announces-visits-2024>.

<sup>36</sup> CAT/C/63/4.

<sup>37</sup> CAT/C/73/2, annex.

establishing the foundation for the sustainable institutionalization of harmonized working methods, including supporting the design of a coordination mechanism proposed by the Chairs of the human rights treaty bodies to reflect the Subcommittee's unique mandate.

69. The Subcommittee would like to take the present opportunity to thank all the stakeholders who have contributed to the process of drafting its general comment on article 4 of the Optional Protocol. These include States parties, national preventive mechanisms, United Nations bodies and mechanisms, international and regional organizations, civil society organizations and academia. Their contributions to and participation in the public consultation that was held during the Subcommittee's fiftieth session, as well as in the period leading up to that consultation, have been vital to the enrichment of the draft general comment.

70. In 2023, two States, Côte d'Ivoire and Slovakia, became parties to the Optional Protocol. The Subcommittee encourages States that have not yet done so to sign and/or ratify the Optional Protocol. The Subcommittee reminds new States parties in particular of their obligation under article 17 of the Optional Protocol to maintain, designate or establish, at the latest one year after its ratification, one or several independent national preventive mechanisms for the prevention of torture. The Subcommittee stands ready to offer its advice and assistance as the States parties strive to meet those obligations.

71. The Subcommittee reiterates the need to receive adequate and relevant information on the effective establishment of any national preventive mechanism, which must take the form of, at the minimum, a legal instrument. In its guidelines on national preventive mechanisms, the Subcommittee specifies that the mandate and powers of the national preventive mechanism should be clearly set out in a constitutional or legislative text.<sup>38</sup> However, considering the difficulties, in some contexts, that States parties face in achieving that, the Subcommittee has clarified its approach and accepts any written legal instrument for that purpose, in the form of legislation or any other legal act. State parties should send the information on the establishment of their national preventive mechanism in a note verbale addressed to the Subcommittee.<sup>39</sup>

72. Recalling that article 17 of the Optional Protocol obliges States parties to maintain, establish or designate their national preventive mechanisms, the Subcommittee recognizes the choice of many States parties to designate their national human rights institutions or ombudspersons as their national preventive mechanisms. Often, this attribution of a supplementary mandate is done without any allocation of new financial resources or staff. In this context, the Subcommittee values and looks forward to continued cooperation with the Global Alliance of National Human Rights Institutions, while recalling that it is the Subcommittee that is the sole custodian of the Optional Protocol. National preventive mechanisms, whatever form they might take, fall within the remit of the Subcommittee.

73. The terms of 12 members of the Subcommittee expire on 31 December 2024, with some finishing an eight-year term and others being up for re-election for a second four-year term. Accordingly, elections will be held on 24 October 2024. The Subcommittee reminds States parties to put forth nominations, in accordance with article 5 of the Optional Protocol, of "persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty". Other fields relevant to the treatment of persons deprived of their liberty and to the Subcommittee's work include medicine, health, psychology, human rights and social work. The Subcommittee recalls that, according to the Optional Protocol, in its composition, due consideration is to be given to equitable geographical distribution, the representation of different forms of civilization and legal systems of the States parties and balanced gender representation, on the basis of the principles of equality and non-discrimination and the independence and impartiality of members.<sup>40</sup>

<sup>38</sup> CAT/OP/12/5, para. 7.

<sup>39</sup> For more information, see <https://www.ohchr.org/en/treaty-bodies/spt/non-compliance-article-17>.

<sup>40</sup> For more information on human rights treaty body membership, see OHCHR, *Handbook for Human Rights Treaty Body Members* (New York and Geneva, 2015).

## VI. Plan of work

74. In 2024, the Subcommittee will hold, in addition to its fifty-second session, from 29 January to 9 February, two more sessions: from 3 to 7 June and from 11 to 15 November. The Subcommittee finalized its schedule of eight visits for 2024,<sup>41</sup> with plans to add a ninth visit if resources allow. This would represent an increase from the eight visits it conducted in 2023. The Subcommittee also plans to adopt its general comment on article 4 in 2024.

75. The Subcommittee will maintain the practice of participation by its members, authorized by its Bureau, in events related to the mandate conferred to it under the Optional Protocol. Such events may include the training of monitoring bodies, conferences on best practices or events regarding ratification procedures of the Optional Protocol, all directed towards strengthening the prevention of torture and ill-treatment at the global level. The Subcommittee would be grateful if all invitations to official events and meetings could be made through the Subcommittee secretariat.

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<sup>41</sup> See para. 61 above.

## Annex I

### Advice provided by the Subcommittee in response to requests from national preventive mechanisms

#### A. Advice to national preventive mechanism on article 18

1. The Subcommittee received a request from a national preventive mechanism for its views regarding the independence of national preventive mechanisms when their mandate is designated within a national human rights institution.

2. As indicated in the guidelines on national preventive mechanisms, the responsibility to ensure that States have in place a national preventive mechanism that fully complies with the requirements of the Optional Protocol lies solely with the States parties. Although the Subcommittee does not, nor does it intend to, formally assess the extent to which mechanisms conform to Optional Protocol requirements, it does consider it a vital part of its role to advise and assist States and mechanisms to fulfil their obligations under the Optional Protocol.<sup>1</sup> The Subcommittee has consistently reiterated that, while there is no single model for a national preventive mechanism, it is imperative that the mechanism be structured and that it carry out its mandate in accordance with the requirements of the Optional Protocol.<sup>2</sup>

3. Article 18 (1) of the Optional Protocol requires that the national preventive mechanisms established, maintained or designated by State parties are independent. This requirement applies to all mechanisms, irrespective of their type or model. Article 18 (1) also requires that States parties ensure the functional independence of the mechanisms.<sup>3</sup> Therefore, the personnel appointed to the mechanism must not give rise to questions of conflict of interest and must discharge the mandate of the mechanism effectively and independently.<sup>4</sup> The Optional Protocol further requires that the mechanism be provided with the financial resources to enable it to deliver on its mandate. Thus, the mechanism should have the sole decision-making power in terms of what resources are required (budget preparation) and how to discharge that budget (expenditure of the budget).<sup>5</sup> Consequently, when the mandate of the mechanism is placed within an existing institution, such as the national human rights institution, the budget of the mechanism should be ring-fenced<sup>6</sup> and it is only the mechanism that should be in charge of the way that the budget is formed and discharged. In other words, the organizational chart of the mechanism should reflect the requirements of the Optional Protocol, which specify that the mechanism should have operational autonomy with regard to its resources, workplan, findings, recommendations and direct and, if needed, confidential contact with the Subcommittee.<sup>7</sup>

4. In addition to the functional independence of the national preventive mechanism itself, the requirement of independence under the Optional Protocol extends to each and every member of the mechanism and its staff, irrespective of the type or model of mechanism. Thus, the Subcommittee has required that even in those cases when the mechanism's mandate is vested in a previously existing institution, including the national human rights institution, the mechanism is to have its own staff and the relevant legislation should specify the period of office of the members of the mechanism and any grounds for their dismissal. Periods of office, which may be renewable, should be sufficient to foster the independent functioning of the mechanism.<sup>8</sup>

<sup>1</sup> CAT/OP/12/5, para. 2.

<sup>2</sup> CAT/OP/PRT/1, para. 15; CAT/OP/MKD/2, para. 15; and CAT/OP/CYP/1, para. 89.

<sup>3</sup> See also CAT/C/57/4 and CAT/C/57/4/Corr.1, annex, para. 12.

<sup>4</sup> CAT/OP/12/5, paras. 17, 18 and 32. See also CAT/OP/SWE/1, para. 142 (c).

<sup>5</sup> CAT/C/57/4 and CAT/C/57/4/Corr.1, annex, para. 13.

<sup>6</sup> CAT/OP/SWE/1, para. 142 (g). See also CAT/OP/12/5, para. 32.

<sup>7</sup> CAT/C/57/4 and CAT/C/57/4/Corr.1, annex, para. 16.

<sup>8</sup> CAT/OP/12/5, paras. 9 and 32.

5. In those cases where the body designated as the national preventive mechanism performs functions in addition to those under the Optional Protocol, as is the case of national human rights institutions, the practice of the States parties to date has been to designate a separate national preventive mechanism unit to ensure independence and respect the requirement of a multidisciplinary composition of the mechanism, as provided in article 18 of the Optional Protocol. This global practice also suggests that, in cases where a mechanism is located within an institution with a more general remit, a separate unit allows it to exercise its preventive mandate more effectively and independently. The key factor from the perspective of the Optional Protocol in all cases remains the ability of each and every mechanism to effectively fulfil its mandate independently, irrespective of the other responsibilities of the institution. Therefore, in cases where the body designated as the mechanism performs functions in addition to those under the Optional Protocol, the Optional Protocol and the guidelines on national preventive mechanisms foresee two different and separate structures serving two different mandates.<sup>9</sup>

6. The guidelines on national preventive mechanisms also clearly state that the mechanisms should complement rather than replace existing systems of oversight and that their establishment should not preclude the creation or operation of other such complementary systems.<sup>10</sup> While the mandates of the mechanisms are fundamentally proactive rather than reactive, the establishment and functioning of a mechanism should take into account the effective cooperation and coordination between preventive and complaint mechanisms in the country.<sup>11</sup>

7. It is also worth noting that, while it is solely the national preventive mechanism that is to implement the preventive mandate under the Optional Protocol, other departments or staff of the national human rights institution or ombudsperson's office are not precluded from contributing to its work, as that cooperation might lead to synergies and complementarity. For instance, the number of complaints received by the institution in relation to a specific place of detention may inform the work of the mechanism. While not recommended to deal with complaints, the mechanism could refer some emergent serious or humanitarian cases to the institution for protection or other action.<sup>12</sup>

## **B. Advice to national preventive mechanism on article 20**

8. The Subcommittee received a request from another national preventive mechanism regarding the documentation to which mechanisms should have access in the exercise of their preventive mandates under the Optional Protocol.

9. Pursuant to article 20 (a) and (b) of the Optional Protocol, the national preventive mechanism is to be granted, *inter alia*, access to all information concerning the number of persons deprived of their liberty, the number and location of such places and the treatment of persons deprived of their liberty and the conditions of their detention.

10. That provision does not impose any limitations as to when the national preventive mechanism is to be granted full access to the information indicated but merely stipulates that such access is to enable the national preventive mechanism to discharge its mandate.

11. The prime mode for the implementation of the national preventive mechanism's mandate is visits to places of deprivation of liberty. However, such visits are not the only means through which the national preventive mechanism is to implement its mandate, as its preventive mandate is broad. This is clearly evident, for example, from article 19 (c) of the Optional Protocol, which mandates national preventive mechanisms to submit proposals and observations concerning existing or draft legislation. This is further supported by the Subcommittee's guidelines on national preventive mechanisms, which state that mechanisms should make proposals and observations to the relevant State authorities regarding existing

<sup>9</sup> CAT/C/57/4 and CAT/C/57/4/Corr.1, annex, para. 18.

<sup>10</sup> CAT/OP/12/5, para. 5.

<sup>11</sup> CAT/OP/BGR/ROSP/1, para. 26.

<sup>12</sup> CAT/C/57/4 and CAT/C/57/4/Corr.1, annex, para. 19.

and draft policy or legislation that they consider to be relevant to their mandate.<sup>13</sup> This is only one example that makes it clear that, in order to effectively discharge the broad preventive mandate, national preventive mechanisms are to have full access to all the information indicated in article 20 of the Optional Protocol at any time they require. Any suggestion that such access to information is to be limited to the actual time when the mechanisms are in the process of carrying out a visit would be a severe impediment to the full implementation of their preventive mandate as stipulated in the Optional Protocol.

12. Moreover, the term “visits” should not be construed narrowly to mean solely the physical time that members of the national preventive mechanism spend in the actual facility or setting of deprivation of liberty; it also includes preparation for the visit and the follow-up thereto. Thus, for example, in order to effectively prepare for a visit, the national preventive mechanism will require the information stipulated in article 20 of the Optional Protocol in advance of the actual visit. Equally, the same information may be required after the visit for the effective and factually correct preparation of the report.

13. Consequently, the national preventive mechanism is to be granted, inter alia, access to all information concerning the number of persons deprived of their liberty, the number and location of such places and the treatment of persons deprived of their liberty and their conditions of detention at any time that it requires this information, as stipulated by article 20 of the Optional Protocol.

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<sup>13</sup> CAT/OP/12/5, para. 35.

## Annex II

### **Summary of the discussion during the annual meeting between the regional team for Europe and national preventive mechanisms of the region**

1. At the meeting during the fiftieth session of the Subcommittee between the regional team for Europe and national preventive mechanisms of the region, two main issues were discussed: (a) prevention of and protection against reprisals by national preventive mechanisms; and (b) monitoring the implementation of recommendations by the national preventive mechanisms.

#### **A. Prevention of and protection against reprisals by national preventive mechanisms**

2. On the prevention of and protection against any forms of reprisals, and based on article 21 (a) of the Optional Protocol, under which any form of sanction against any person or organization for having communicated to the national preventive mechanism any information is forbidden in absolute terms, the Subcommittee, with reference to its policy on reprisals,<sup>1</sup> recalled that:

(a) The effective implementation of the preventive mandates vested by the Optional Protocol in the national preventive mechanisms and the Subcommittee require that these bodies are able to receive any information pertinent to the prevention of torture and ill-treatment in States parties to the Optional Protocol. It is therefore axiomatic that any person and/or organization should feel free to communicate with the national preventive mechanisms and the Subcommittee without any fear for subsequent adverse treatment and that no authority or official shall order, apply, permit or tolerate such reprisals;

(b) The Subcommittee has a well-established practice of a designated focal point for reprisals among its members, with that member being publicly identified on its website. Moreover, it is a well-established practice during the Subcommittee's visits to States parties to designate a member of the delegation to act as a focal point for reprisals in the context of the specific visit;

(c) In order to guard against possible reprisals, it is crucial that each national preventive mechanism adopt a specific, clear strategy for addressing any instances of reprisals that might arise. This strategy should be adopted as a written policy and the mechanism should designate a specific person from the mechanism as a focal point to act as a first port of call should an allegation of reprisals arise;

(d) Given the particular vulnerability of persons deprived of their liberty, specific attention should be given to possible reprisals in the context of visits to places of deprivation of liberty by the national preventive mechanisms. The mechanisms should consider factors mitigating the possibilities for reprisals, such as clear instructions to the authorities in charge of the facility that reprisals will not be tolerated, informing persons deprived of their liberty of ways to contact the mechanism in case of reprisals, repeat visits and follow-up, as well as confidential exchanges with other bodies that might visit the same facilities;

(e) At the level of the United Nations, it is paramount that the national preventive mechanisms recall that the Special Rapporteur on the situation of human rights defenders and the Assistant Secretary-General for Human Rights can both provide further recourse in case of reprisals.

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<sup>1</sup> [CAT/OP/6/Rev.1](#).

## **B. Recommendations of the national preventive mechanisms to national authorities**

3. The following points were discussed regarding the monitoring of the implementation of recommendations by national preventive mechanisms:

(a) According to article 19 of the Optional Protocol, national preventive mechanisms are to be granted, at a minimum, the power to make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

(b) When making such recommendations, national preventive mechanisms should be guided by the so-called SMART principle, which requires each recommendation to be specific, measurable, achievable, relevant and time-bound;

(c) To improve the impact of their recommendations, national preventive mechanisms should develop follow-up strategies to secure the implementation of their recommendations;

(d) By regularly following up on recommendations, national preventive mechanisms should be able to assess the level of their implementation and decide on further steps to take to achieve their full implementation;

(e) Follow-up strategies should include quality reporting and recording of data on the recommendations, divided into the short and the long term, and a monitoring methodology based on dialogue with the authorities and follow-up visits. The implementation of recommendations can also be achieved by commenting on legislation, proposing changes to policies and practice or by engaging in strategic litigation;

(f) Involving the media and using publicity are also crucial elements of a follow-up strategy;

(g) National preventive mechanisms should continue to cooperate with each other through networks of national preventive mechanisms and other forums regarding good practices in respect of monitoring the implementation of recommendations;

(h) National preventive mechanisms need to work closely with international organizations and other national partners in order to build joint pressure for the implementation of the given recommendations.

## Annex III

### National human rights institutions and national preventive mechanisms

1. In the context of the Fourteenth International Conference of Human Rights Institutions, organized by the Global Alliance of National Human Rights Institutions and held in Copenhagen in November 2023, the Subcommittee recalled that the torture prevention system of the Optional Protocol obliged States parties to maintain, designate or establish their own national preventive mechanism as a permanent, independent structure for the prevention of torture and ill-treatment. While articles 17–23 of the Optional Protocol set out the key characteristics of the national preventive mechanisms, they neither set out a specific model for the mechanisms nor provide a preference as to which entity may be best suited for that role. Rather, the choice as to the structure is left entirely to the discretion of the State and, therefore, as the Subcommittee has repeatedly stated, this choice should take into account the idiosyncrasies of national realities.<sup>1</sup>

2. In its jurisprudence, the Subcommittee has consistently emphasized that there can be no “one-size-fits-all” approach to the designation of national preventive mechanisms. While many States parties to the Optional Protocol have chosen to designate their national human rights institutions, be they human rights commissions or ombudspersons, as their mechanisms, there is no prescription arising from the Optional Protocol requiring States to make that specific choice. Indeed, many States have chosen different entities as their mechanisms. Whatever format a State chooses, it must comply with the stipulations of the Optional Protocol<sup>2</sup> and the advice to States in article 18 of the Optional Protocol, to give due consideration to the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) when establishing their mechanism, should be read and understood as primarily a reference to the independent functioning of the body, and not as a prescription in terms of a specific model.

3. Turning to the national human rights institutions that have been designated as national preventive mechanisms,<sup>3</sup> the Subcommittee takes note of the peer-review system of the Subcommittee on Accreditation of the Global Alliance of National Human Rights Institutions, which also contains a separate section for national human rights institutions that are also national preventive mechanisms.<sup>4</sup> The Subcommittee wishes to clarify that it has no input into this peer-review system and that, consequently, any assessment by the Subcommittee on Accreditation should not be taken to represent the Subcommittee’s views as to whether any particular national preventive mechanism complies with the requirements of the Optional Protocol.

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<sup>1</sup> CAT/C/57/4 and CAT/C/57/4/Corr.1, annex, para 17.

<sup>2</sup> See CAT/OP/12/5.

<sup>3</sup> CAT/C/57/4 and CAT/C/57/4/Corr.1, annex, paras. 11–16.

<sup>4</sup> Global Alliance of National Human Rights Institutions, “[Compilation of the Rules and working methods of the SCA](#)”, p. 34.