



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

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

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I. Introduction

1. This sixth annual report, submitted pursuant to article 16, paragraph 3, of the Optional Protocol, marks the end of what might be called the “foundational period” of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Subcommittee). As will be touched on below, five of its founder members stepped down from the Subcommittee at the end of 2012, and as a result the cycle of biannual turnover within its membership has commenced. During the reporting period (January to December 2012) the Subcommittee sought to prepare for this by capitalizing on the wealth of experience currently at its disposal, reflecting on what has worked well and seeking to encapsulate this in its working practices. At the same time, it has continued to allow its methods to evolve, reflecting the changing patterns of expectations concerning its visiting programme, work with national preventive mechanisms (NPMs), States parties and broader engagement within the United Nations and with other international organizations and regional systems. Details of this are set out in the present report, but more can be found on the website of the Subcommittee (<http://www2.ohchr.org/english/bodies/cat/opcat/index.htm>).

2. Although the basic pattern of its work is now established, the Subcommittee will continue to evolve. As the present report highlights, key developments this year have included an increase in the number of visits undertaken, the inauguration of NPM advisory visits, the first grants being made from the Special Fund and the greater use of working groups and regional NPM task forces to drive the work of the Subcommittee. Less visible, but equally significant, has been the rise in the number of replies to visit reports received from States parties, triggering further responses from the Subcommittee in the spirit of ongoing dialogue.

3. The Subcommittee intends to continue to expand its work in fulfilment of its mandate as best it can, convinced that the Optional Protocol offers unparalleled opportunities for the effective prevention of torture, cruel, inhuman and degrading treatment or punishment. However, this ever increasing workload means that members need to be continually engaging in Subcommittee-related activities and that the Subcommittee secretariat is working under unreasonable yet constantly rising levels of pressure. While fully appreciative of the work of the Office of the United Nations High Commissioner for Human Rights (OHCHR) to support the work of the Subcommittee to the maximum of available resources, the Subcommittee is increasingly concerned that it is unable to make the most of the opportunities for torture prevention which the Optional Protocol creates as a result of the practical constraints under which it works.

II. The year in review

A. Participation in the Optional Protocol system

4. As at 31 December 2012, 65 States are party to the Optional Protocol.¹ In 2012, four States ratified or acceded to the Optional Protocol: Hungary (12 January), the Philippines (17 April), Mauritania (3 October) and Austria (4 December).

5. As a result, the pattern of regional participation is now as follows:

States parties by region

Africa

12

¹ For a list of the States parties to the Optional Protocol, see the website of the Subcommittee.

Asia	7
Eastern Europe	18
Group of Latin American and Caribbean States	14
Group of Western European and other States	14

6. The regional breakdown of signatory States which are yet to ratify the Optional Protocol is now as follows:

States that have signed but not ratified the Optional Protocol, by region (total 25)

Africa	9
Asia	2
Eastern Europe	1
Group of Latin American and Caribbean States	2
Group of Western European and Other States	11

B. Organizational and membership issues

7. During the reporting period (1 January to 31 December 2012), the Subcommittee held three one-week sessions at the United Nations Office at Geneva, from 20 to 24 February, from 18 to 22 June and from 12 to 16 November 2012.

8. The Subcommittee membership remained unchanged during 2012.² However, on 25 October 2012, at the fourth Meeting of States parties to the Optional Protocol, 12 members were elected to fill the vacancies arising in respect of members whose terms of office would expire on 31 December 2012. The terms of office of all the newly elected members commenced on 1 January 2013 and will be for a period of four years, expiring on 31 December 2016. In conformity with the Subcommittee's rules of procedure, all new members of the Subcommittee made a solemn declaration at the opening of the February 2013 session before assuming their duties.

9. The Bureau, which was elected for the period February 2011–February 2013, comprised Malcolm Evans as Chairperson and four Vice-Chairpersons, each of whom exercised primary responsibility (under the overall leadership of the Chairperson and in cooperation with each other) for aspects of the Subcommittee's work as provided for in the Optional Protocol. The four Vice-Chairpersons and their areas of primary responsibility were as follows: Mario Coriolano, National Preventive Mechanisms; Zdeněk Hájek, Visits; Suzanne Jabbour, External Relations; and Aisha Muhammad, Jurisprudence and Subcommittee Rapporteur. On 1 October 2012, Mr. Coriolano resigned, following election as a member of the Human Rights Council Advisory Committee.

10. In its fifth annual report (CAT/C/48/3, para. 10), the Subcommittee set out details of the system of regional focal points and regional task forces on NPMs which has been established. The role of the focal points is to undertake liaison activities and facilitate the coordination of the Subcommittee's engagement within the regions they serve and to lead the work of the regional NPM task forces. The regional focal points are as follows: Africa, Fortuné Zongo; Asia and the Pacific, Lowell Goddard; Europe, Mari Amos; Latin America,

² For a list of members and the duration of their mandate, see the website of the Subcommittee (www2.ohchr.org/english/bodies/cat/opcat/index.htm).

Víctor Rodríguez Rescia. During the reporting period, the regional task forces have been developed to form a primary building block of the Subcommittee's work. The task forces meet in parallel during plenary sessions to consider developments relating to NPMs within their region. They then report back to the plenary with recommendations regarding plans for further and future engagement. Based on their regional knowledge and experience, the task forces also make recommendations to the plenary regarding the visiting programme for the forthcoming year, ensuring that the programme of universal visiting is generated in a reasoned and participative manner in accordance with strategic operational criteria, impartially applied.

11. The Subcommittee's working groups on security matters and on medical issues met during the reporting period. The former concluded a protocol on field security during Subcommittee visits. At the seventeenth session of the Subcommittee, the working group on medical issues convened a training workshop on mental health in places of detention, with the participation of eight national experts, and with the generous financial support of the German Ministry of Foreign Affairs and the assistance of the Association for the Prevention of Torture (APT).

12. At its seventeenth session (June 2012), the Subcommittee decided to establish a number of ad hoc working groups, further information on which is provided in chapter IV, sections A and B, below.

13. All the above-mentioned developments reflect the Subcommittee's preference to maximize the potential of its plenary sessions by meeting in subgroups and working groups which facilitate engagement with a broader range of issues, with more depth and focus and in a more inclusive fashion than would otherwise be possible.

C. Visits conducted during the reporting period

14. The Subcommittee carried out five visits in 2012 in fulfilment of its mandate.

15. Two of the visits followed the established pattern of visiting under article 11 (a) of the Optional Protocol. From 18 to 27 April 2012, the Subcommittee visited Argentina, the sixth country visited by the Subcommittee in Latin America. From 19 to 28 September 2012, it visited Kyrgyzstan, the fourth country visited by the Subcommittee in Asia. The Subcommittee had announced its intention to undertake a third visit, to Gabon, during the course of 2012 but this visit has been delayed for operational reasons.

16. In accordance with its mandate under articles 11 (b) and 12 of the Optional Protocol, in 2012 the Subcommittee undertook for the first time short advisory visits on the establishment and functioning of national preventive mechanisms (NPM advisory visits), in Honduras (April-May), Republic of Moldova (October) and Senegal (December). Further information on this development is provided in chapter IV, section A, below.

17. Further summary information on all these visits, including lists of places visited, may be found in the press releases issued following each visit, which are available on the Subcommittee website.

D. Dialogue arising from visits, including publication of the Subcommittee's reports by States parties and national preventive mechanisms

18. The substantive aspects of the dialogue process arising from visits are governed by the rule of confidentiality and are only made public with the consent of the State party in question. At the end of the reporting period the Subcommittee had transmitted a total of 15 visit reports to States parties (3 within the reporting period, to Argentina, Brazil and Mali),

one follow-up visit report, two reports arising from an NPM advisory visit to an NPM and two reports arising from an NPM advisory visit to a State party (both within the reporting period, to Honduras and the Republic of Moldova). A total of seven Subcommittee visit reports have been made public following a request from the State party under article 16, paragraph 2, of the Optional Protocol, one of which was within the reporting period, that of Brazil. One visit report arising from the NPM advisory visit to Honduras was made public following a request from the NPM of Honduras.

19. In conformity with established practice, States parties are requested to provide a reply to a visit report within six months of its transmission to the State party, giving a full account of action taken to implement the recommendations which it contains. At the end of this reporting period, the Subcommittee had received nine replies from State parties, four of which were received within the reporting period (Brazil, Lebanon, Mexico and Ukraine). The Subcommittee considers the replies from the following States parties to be currently overdue: Cambodia, Honduras, Liberia and Maldives. Reminder letters have been sent to those States parties. The replies from Bolivia (Plurinational State of), Lebanon, Mauritius and Ukraine remain confidential, while those from Benin, Brazil, Mexico, Paraguay and Sweden have been made public at the request of those States parties.

20. During the reporting period, the Subcommittee provided its own responses and/or recommendations to the replies of Benin, Bolivia (Plurinational State of), Lebanon and Ukraine; such responses had also been transmitted to Mauritius and Sweden previous to this period. All of these currently remain confidential.

21. The Subcommittee has so far conducted one follow-up visit, to Paraguay, with a follow-up visit report transmitted to the State party, to which a reply has been received. Both the follow-up visit report and the follow-up reply have been made public at the request of the State party.

22. The Subcommittee has transmitted reports to the NPM and State party arising from its NPM advisory visits to Honduras and the Republic of Moldova; the reports are still confidential, and the replies thereto are not yet due.

23. An innovation in follow-up dialogue occurred at the seventeenth session of the Subcommittee, when the Subcommittee held a private meeting with the Mexican authorities on the State party's reply to the Subcommittee visit report. In the context of this fruitful meeting with a large Mexican delegation, the State party presented a supplementary reply which formed the basis of a beneficial discussion. At its request, the Subcommittee allowed the participation of the Mexican NPM at this meeting, enabling it to provide oral comments on the Subcommittee visit report, which had previously been made available to it in accordance with the provisions of article 16, paragraph 1, of the Optional Protocol.

E. Developments concerning the establishment of national preventive mechanisms

24. Of the 65 States parties, 43 have officially notified the Subcommittee of the designation of their NPMs, information concerning which is listed on the Subcommittee website.

25. Twelve official notifications of designation were transmitted to the Subcommittee in 2012: Argentina, Armenia, Bulgaria, Croatia, Ecuador, Hungary, Montenegro, Nicaragua, Nigeria, Togo, Ukraine and Uruguay.

26. Twenty-two States parties have therefore not yet notified the Subcommittee of the designation of their NPMs. The one-year deadline for the establishment of an NPM provided for under article 17 of the Optional Protocol has not yet expired for one State

party (Philippines). Furthermore, two States parties (Bosnia and Herzegovina and Kazakhstan) have made declarations under article 24 of the Optional Protocol permitting them to delay designation for up to an additional two years. On 9 July 2012, Romania made a request to extend the time frame for its obligation to establish an NPM under article 24, paragraph 2, of the Optional Protocol for a further two-year period. At its forty-ninth session (November 2012), after due representations made by the State party and after consultation with the Subcommittee, the Committee against Torture acceded to this.

27. Eighteen States parties have therefore not complied with their obligation under article 17 of the Optional Protocol, which is a matter of major concern to the Subcommittee.

28. The Subcommittee has continued its dialogue with all States parties which have not yet designated their NPMs, encouraging them to inform it of their progress. Such States parties were requested to provide detailed information concerning their proposed NPMs (such as legal mandate, composition, size, expertise, financial and human resources at their disposal, and frequency of visits). At its seventeenth session, the Subcommittee held meetings with the Permanent Missions of Chile, Nicaragua, Paraguay and Peru, as well as with African States parties to the Optional Protocol, regarding the establishment and functioning of NPMs. At its eighteenth session, the Subcommittee held meetings with the Permanent Missions of Cambodia and Guatemala on NPM-related issues. Members of the Subcommittee are also in contact with other States parties who are in the process of establishing their NPMs. At each Subcommittee session, the NPM task forces review progress towards the fulfilment of each State party's obligation, making appropriate recommendations to the plenary on how the Subcommittee may best assist and advise in this process, in accordance with its mandate under article 11 (b)(i) of the Optional Protocol.

29. The Subcommittee has also established and maintained contact with NPMs themselves, in fulfilment of its mandate under article 11 (b)(ii) of the Optional Protocol. At its sixteenth session, the Subcommittee held a meeting with the Spanish NPM in order to exchange information and experiences and discuss areas for future cooperation. At its seventeenth session, the Subcommittee held a similar meeting with the Slovenian NPM. Finally, at its eighteenth session, the Subcommittee held a meeting with the NPMs of France and Ecuador. It should be noted that at the seventeenth session of the Subcommittee, the Mexican NPM participated in the discussion between the Subcommittee and the Mexican authorities in respect of follow-up to the Subcommittee's visit report on Mexico (see chap. II, sect. D, above). The Subcommittee is also pleased that during 2012, 23 NPMs transmitted their annual reports to the Subcommittee. These have been posted on the website of the Subcommittee and reviewed by the NPM task forces.

30. During the course of the reporting period, Subcommittee members accepted invitations to be involved in a number of meetings at the national, regional and international levels, concerning the designation, establishment and development of NPMs in particular, or the Optional Protocol in general (including NPMs). Those activities were organized with the support of civil society organizations (in particular APT, Amnesty International, the Centro de Estudios Legales y Sociales, the International Rehabilitation Council for Torture Victims, Defence for Children International, the International Federation of ACAT (Action by Christians for the Abolition of Torture), the Hungarian Helsinki Committee, the World Organisation Against Torture, Penal Reform International, and the Optional Protocol Contact Group), academic institutions (the Human Rights Implementation Centre at the University of Bristol, the Ludwig Boltzmann Institute and the American University Washington College of Law), NPMs, States (in particular the Permanent Mission of France to the United Nations in New York), regional bodies such as the African Commission on Human and Peoples' Rights, the Committee for the Prevention of Torture in Africa, the Inter-American Commission on Human Rights, the Council of Europe, the European Commission and the Office for

Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (ODIHR-OSCE), as well as international organizations such as the International Organization of la Francophonie (OIF), the United Nations Office on Drugs and Crime and OHCHR. These events included, inter alia:

(a) February 2012: Regional consultation on enhancing cooperation between United Nations and African human rights mechanisms on prevention of torture, held in Addis Ababa by OHCHR and the African Commission on Human and Peoples' Rights;

(b) February 2012: Seminar on "Forensic evidence in the fight against torture", held in Washington by the American University Washington College of Law and APT;

(c) February 2012: Seminar on "New arrangements for monitoring places of detention in Ireland: the Optional Protocol to the United Nations Convention against Torture", held in Dublin by the Irish Council for Civil Liberties;

(d) March 2012: "Atlas of Torture Project" held in Asunción by the Ludwig Boltzmann Institute;

(e) March 2012: Twenty-fifth annual meeting of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, segment entitled "NHRIs and monitoring – focus on OPCAT and detention", held in Geneva by OHCHR;

(f) March 2012: Regional conference entitled "Combating and Preventing Torture and Ill-treatment in the South Caucasus", held in Tbilisi by ODIHR and Penal Reform International;

(g) March 2012: Seminar on "The role of the public defence in the prevention of torture", held in Sao Paulo by the Public Defender's Office of Sao Paulo State;

(h) April 2012: Seminar on "The role of the public defence in the prevention of torture", held in Asunción by the Ludwig Boltzmann Institute;

(i) April 2012: Seminar on the implementation of the Optional Protocol in Mongolia, held in Ulaanbaatar by APT, Amnesty International, the Asia Pacific Forum and the National Human Rights Commission of Mongolia;

(j) May 2012: Workshop on the implementation of the Subcommittee visit report on Mexico, held in San Cristobal de la Casas by APT;

(k) May 2012: Consultations on the Guatemalan NPM, held in Guatemala by OHCHR and the International Rehabilitation Council for Torture Victims;

(l) May 2012: Consultations on the establishment of NPMs, held in Tunis by the World Organisation Against Torture;

(m) May 2012: Round table on "Effective monitoring to prevent torture: promoting OPCAT", held in Budapest by the Hungarian Helsinki Committee and the Mental Disability Advocacy Center;

(n) May 2012: Event on the follow-up to the visit report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, held in Bishkek by APT;

(o) May 2012: Consultations on the establishment of NPMs, held in Santiago by OHCHR and the Chilean NHRI;

(p) June 2012: Seminar on "The triangular working relationship between SPT, CPT and NPM: inspection in the field of detention on a global, regional and domestic level", held in Nieuwersluis by the NPM of the Netherlands;

(q) June 2012: Workshop on “Preventing torture in the context of democratic transitions in North Africa”, held in Rabat by OHCHR, APT and the Inter-Ministerial Commission of Morocco;

(r) June 2012: Consultations on the NPM of Panama, held in Panama by APT;

(s) July 2012: Follow-up consultations to the Subcommittee visit, held in Beirut by OHCHR;

(t) August 2012: Seminar on torture prevention in Africa, in particular on the tenth anniversary of the adoption of the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines), held in Johannesburg by APT and the African Commission on Human and Peoples’ Rights;

(u) September 2012: Seminar and consultations on the establishment of the NPM in Turkey, held in Ankara by APT and a consortium of Turkish non-governmental organizations;

(v) December 2012: International Congress on “Children and violence in juvenile justice – the current situation, prevention and response mechanisms: the Latin American experience”, held in Asunción by Defence for Children International with the support of the United Nations Office on Drugs and Crime.

31. Under the framework of the European NPM Project of the Council of Europe/European Union, with APT as implementing partner, the Subcommittee has participated in two thematic workshops: (a) on the immigration removal process and preventive monitoring, in Switzerland in March 2012; and (b) on the removal process: NPM communication with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) and other immigration stakeholders, in Serbia in June 2012. The Subcommittee also participated in consultations on the process of NPM establishment in Ukraine in April 2012.

32. In the context of the tenth anniversary of the adoption of the Optional Protocol by the General Assembly, the Permanent Mission of France to the United Nations in New York organized a seminar entitled “OPCAT+10: Making a Difference in Torture Prevention”, held on 10 May 2012 at United Nations Headquarters. The event was co-sponsored by APT and OHCHR. It gathered international and national experts (including the Head of the French NPM) and was well attended (by nearly 60 State and NGO representatives). Participants shared their experiences and identified challenges in the developing field of torture prevention.

33. The Subcommittee would like to take this opportunity to thank the organizers of these events for the invitations to participate that were extended to it.

F. The Special Fund under article 26 of the Optional Protocol

34. In accordance with article 26, paragraph 1, of the Optional Protocol, the purpose of the Special Fund is to help finance the implementation of Subcommittee recommendations made after a visit to a State party to the Optional Protocol as well as education programmes of NPMs. The Special Fund is administered by OHCHR in conformity with the United Nations Financial Rules and Regulations and the relevant policies and procedures promulgated by the Secretary-General. As an interim scheme, it was decided that the OHCHR Grants Committee, the advisory body to the High Commissioner for Human Rights, would decide on the eligibility of projects and award grants based on the evaluation criteria set out in the guidelines for applications. This interim scheme will be reviewed in 2013.

35. The Special Fund receives voluntary contributions from Governments, intergovernmental and non-governmental organizations and other private or public entities. To date, it has received a total of US\$ 1,130,462.29 in contributions, from the Czech Republic (\$29,704.98), Maldives (\$5,000), Spain (\$82,266.30), and the United Kingdom of Great Britain and Northern Ireland (US\$1,013,491.01). The Subcommittee is convinced that the Special Fund is a valuable tool for furthering prevention of torture and wishes to express its gratitude to these States for their generous contributions.

36. The Special Fund became operational in summer 2011, and the first call for applications was launched in November 2011. The first grants were awarded during 2012. Indeed, under the call for applications for 2012, 69 applications were received, out of which 25 were deemed admissible (those submitted within the deadline and in which the geographic eligibility criteria were met, i.e., projects aimed at implementing recommendations made by the Subcommittee after a visit to a State party, provided those recommendations are contained in a report that has become public by the request of that State party). Nine projects, encompassing a wide range of activities, in accordance with the Subcommittee recommendations, that address the prevention of torture in Benin, Honduras, Maldives, Mexico and Paraguay were approved and grants awarded. The remaining 16 projects were rejected by the Grants Committee, for not meeting the thematic selection criteria established by the guidelines for applications for the period 2011-2012.

37. A new call for applications to the Special Fund was published on 15 August 2012 and closed on 15 October 2012. Under this call, 34 applications were received, out of which 4 were considered inadmissible. The 30 applications deemed admissible (those submitted within the deadline and in which the geographic eligibility criteria were met) concern six of the seven countries that had agreed on the publication of the Subcommittee report following the country visit: Benin, Brazil, Honduras, Maldives, Mexico and Paraguay. Out of those admissible projects, 11 applications were received from governmental bodies, 17 from non-governmental organizations and 2 from NPMs.

38. The Subcommittee is pleased that during the reporting period OHCHR, in its capacity as administrator of the Special Fund, has consulted it regarding the evaluation process of projects under the call for applications for 2012 and the call for applications for 2013. It asked the Subcommittee to identify thematic priorities relating to the countries concerned and this informed the call for applications for 2013, the details of which are available at <http://www2.ohchr.org/english/bodies/cat/opcat/SpecialFund2013.htm>.

39. The Subcommittee is convinced that such focused guidance will greatly assist applicants in presenting their projects. It will also help to enhance the preventive impact of the grants by ensuring they are used to support the most pressing needs, commensurate with the resources available. The Subcommittee is pleased that the maximum amount of the grants has increased and hopes that the fund's success will prompt further donations so this trend may continue. The Subcommittee will continue to review the effectiveness of the fund and to provide advice to its administrators.

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

A. International cooperation

1. Cooperation with other United Nations bodies

40. As provided for under the Optional Protocol, the Subcommittee Chairperson presented the fifth annual report of the Subcommittee (CAT/C/48/3) to the Committee

against Torture at a plenary meeting on 8 May 2012. The Subcommittee and the Committee also took advantage of their simultaneous sessions in Geneva, in November 2012, to discuss a range of issues, both substantive and procedural, that are of mutual concern.

41. In conformity with General Assembly resolution 66/150, the Subcommittee Chairperson presented the fifth annual report of the Subcommittee to the General Assembly at its sixty-seventh session in October 2012. This event also provided an opportunity for the Subcommittee Chairperson to meet with the Chairperson of the Committee against Torture and the Special Rapporteur on the question of torture, who both also addressed the General Assembly.

42. The Subcommittee has continued to be actively involved in the annual Meeting of chairpersons of human rights treaty bodies (the twenty-fourth Meeting was held from 25 to 29 June 2012 in Addis Ababa). In response to the call of the High Commissioner for Human Rights to strengthen the treaty body system, the Subcommittee endorsed the Dublin II outcome document at its seventeenth session. At its eighteenth session, the Subcommittee endorsed the Guidelines on independence and impartiality of members of the human rights treaty bodies (Addis Ababa guidelines) and adapted its rules of procedure to ensure they are in full conformity with the Guidelines. It also adopted a statement on the treaty body strengthening process (available on the Subcommittee website). Further, it also participated in numerous other OHCHR activities (see chap. II, sect. E above).

43. The Subcommittee continued its cooperation with the Special Rapporteur on the question of torture and joined him, along with the Committee against Torture and the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, in issuing a statement on the occasion of the International Day in Support of Victims of Torture on 26 June 2012.

44. The Subcommittee continued its cooperation with the United Nations High Commissioner for Refugees, the World Health Organization and the United Nations Office on Drugs and Crime.

2. Cooperation with other relevant international organizations

45. The Subcommittee continued its cooperation with the International Committee of the Red Cross, particularly in the context of its field visits.

46. The Subcommittee is pleased to have begun, during the reporting period, a process of cooperation with OIF by meeting during a plenary session at its sixteenth session. A total of 33 States parties and 11 signatories of the Optional Protocol are members of OIF, and this provides a solid basis for cooperation under the main pillar of the Subcommittee's activities. In 2012, a Subcommittee member participated in the selection of projects to be financed by the OIF aimed at combating and preventing torture.

B. Regional cooperation

47. Through its focal points for liaison and coordination with regional bodies, the Subcommittee continued its cooperation with other relevant partners in the field of torture prevention, including the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights, the Council of Europe, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Commission and ODIHR-OSCE.

C. Civil society

48. The Subcommittee has continued to benefit from the essential support of civil society actors, and in particular the Optional Protocol Contact Network³ (which contributed to each of the Subcommittee's sessions in the reporting period), and academic institutions (including the Human Rights Implementation Centre and the Ludwig Boltzmann Institute). It would like to take this opportunity to thank them for their work in promoting the Optional Protocol and in supporting the Subcommittee in its activities. The Subcommittee would like to express its particular thanks to APT for its support, including its assistance in the organization of the training workshop at the seventeenth session of the Subcommittee.

IV. Issues of note arising from the work of the Subcommittee during the period under review

A. Development of the Subcommittee's working practices

1. Visiting programme

49. To date the majority of the Subcommittee visits, in accordance with its mandate under article 11 (a) of the Optional Protocol, have largely taken the form of "regular visits" to States parties, with one follow-up visit also having been undertaken.⁴ Such visits are an important part of the Subcommittee's mandate, but they do not necessarily provide adequate opportunities for the Subcommittee to fulfil its mandate under article 11 (b) in relation to NPMs.

50. In order to address this gap,⁵ to ensure optimal engagement with all aspects of its mandate, and to make the best use of its expanded membership and expertise, the Subcommittee decided that, in addition to regular and follow-up visits, its annual visiting programme should include a new form of visit focused on engaging with issues concerning the NPM: "NPM advisory visits". The Subcommittee has developed a new methodology for these visits.

51. During the year in review, three NPM advisory visits were included in the visiting programme. The choice of visits was decided by Subcommittee members after considering the date of ratification of the Optional Protocol by the State; its practice regarding the establishment and development of NPMs, geographic distribution, and size and complexity; preventive monitoring at the regional level; and any specific or urgent issues which might bear upon the positive impact of such a visit, in addition to the possibility of combining visits for practical and budgetary purposes. During its NPM advisory visits the Subcommittee does not visit places of detention on the basis of its own visiting mandate, although it might do so at the invitation of the NPM, in accordance with the normal working practices of the NPM.

52. Following its regular and follow-up visits, the Subcommittee issues confidential reports to States parties. Where the Subcommittee conducts an NPM advisory visit, the Subcommittee will issue two reports: one to the NPM and another to the State party, each of which is confidential to the recipient in accordance with the provisions and approach set

³ For a list of members, see the Subcommittee website.

⁴ Under art. 13, para. 4, of the Optional Protocol.

⁵ Under art. 11 (b) of the Optional Protocol.

out in the Optional Protocol. Both of these reports can, however, be made public with the consent of the recipient as is the case with any other report of Subcommittee.

53. One of the benefits of this new approach is that it will enable the Subcommittee to undertake more visits than in previous years through a combination of regular visits, NPM advisory visits and follow-up visits. It will thereby enable the Subcommittee to fulfil its overall mandate in a universal, non-discriminatory and non-selective fashion. In addition, fiscal constraints and the challenges posed by the secretariat being understaffed – which remain obstacles to the Subcommittee fulfilling its mandate – support this increasingly targeted approach to its work.

2. Activities relating to national preventive mechanisms, outside of the visiting programme

54. The regional task forces formed in 2011 have been successful in building a more meaningful and structured engagement with NPMs. The task forces have initiated communication and dialogue with NPMs, gathering information about the situation in respect of persons deprived of liberty. However, the Subcommittee has observed that while working with NPMs in some countries and regions has been quite productive, this is not always the case. Establishing and maintaining communication and information sharing with some NPMs has been difficult, and this appears to have a direct correlation with the situation regarding the structuring and nature of the functioning of NPMs, in addition to, of course, whether they have been established in the first place. The Subcommittee wishes to highlight the importance of the establishment and, thereafter, the effective operation of an independent NPM, in accordance with the Subcommittee Guidelines, in order to ensure compliance with the Optional Protocol.

55. The Subcommittee will continue its practice of inviting NPMs to its sessions, either in plenary or with regional task forces, to further develop its understanding of how different NPMs carry out their work and to share experiences with them. The Subcommittee finds these exchanges highly beneficial, enriching its understanding and enhancing its capacity to identify, share and disseminate good practice.

3. Development of comments on substantive issues

56. The Subcommittee is aware that the increasing visibility of its comments and approaches to prevention has had the welcome consequence of fostering greater interest in its work by those with experience in relevant fields and a desire that they be able to contribute to that process. It has therefore decided on a methodology to be followed when developing thematic papers, which includes the possibility of having public consultations with relevant stakeholders at appropriate points in the process of their formulation when the Subcommittee considers it to be beneficial and practical to do so.

57. The Subcommittee has made public a provisional statement on the Standard Minimum Rules for the Treatment of Prisoners and hopes to make public a policy paper on reprisals. The Subcommittee welcomes comments on these issues, with a view to making the documents more holistic.

4. Confidentiality

58. The Subcommittee is fully aware of the need to ensure that it fully respects the principle of confidentiality in its work, this being a central element of the framework surrounding its visiting mandate. The Subcommittee is continually reviewing the practical implications of this principle in order to ensure that it is applied with the least possible impact on its ability to work effectively.

5. Training

59. In order to enhance its knowledge and capacity in monitoring non-traditional places of detention, the Subcommittee initiated and held a two-day workshop on monitoring mental health and social care institutions, with the financial assistance of the Government of Germany and administrative assistance from APT. Its purpose was to enable the Subcommittee to address, during its visits, issues of stigmatization, discrimination, deprivation of human rights, neglect and ill-treatment of people with mental illness and disabilities. The Subcommittee is aware that persons in mental health and social care institutions comprise just one among many groups of vulnerable persons, and is mindful of the position of women, juveniles, members of minority groups, foreign nationals, asylum seekers, persons with disabilities, lesbian, gay, bisexual and transgender persons, and members of other vulnerable groups who are deprived of their liberty. This workshop was the first of its kind and the Subcommittee hopes to develop its knowledge and skills through similar workshops in future.

B. Establishment of ad hoc working groups

60. During 2012, the Subcommittee established a number of ad hoc working groups to consider (a) systemic issues related to the interaction of the Subcommittee with NPMs, (b) engagement with processes concerning the Standard Minimum Rules for the Treatment of Prisoners, (c) induction and continuous training of Subcommittee members, (d) reprisals, and (e) procedural issues, including issues concerning access to places of detention. The working groups report to the plenary, which retains responsibility for decision-making. The Subcommittee believes that the use of working groups allows for more focused consideration of a broader range of issues than would otherwise be possible, and intends to build on this practice to enhance member participation and effective functioning. The Subcommittee regrets the lack of translation facilities for working groups meeting outside of the plenary room, which hampers this more efficient use of session time.

61. The working group on Subcommittee/NPM interaction has highlighted, inter alia:

(a) The need to ensure that the methodologies used by the regional task forces are internally consistent in order to maintain an equality of treatment;

(b) The need to establish a mechanism through which NPMs could correspond with and receive appropriate responses from the Subcommittee;

(c) The importance of developing a questionnaire to collect data from NPMs so that a database with comparable information could be established and maintained;

(d) The value in engaging with NPMs regarding the activities of the Subcommittee, including in country activities.

62. The working group on Standard Minimum Rules has highlighted, inter alia, the major contribution which in general it believes the Subcommittee can make to discussions concerning the Standard Minimum Rules. In particular, it has highlighted several areas which might benefit from appraisal, including, but not limited to:

(a) Language and terminology used in the text;

(b) Information provided to and complaints received from prisoners;

(c) Contact with the outside world / social relations and aftercare;

(d) Religion;

(e) Persons in vulnerable situations;

- (f) Categorization / special categories;
 - (g) Independent inspection;
 - (h) Private prisons;
 - (i) Preventive approaches to torture, cruel or inhuman or degrading treatment or punishment.
63. The working group on induction and continuous training highlighted, inter alia:
- (a) The need to prioritize induction and training of new members at the nineteenth session of the Subcommittee;
 - (b) The need to assist newly elected members through the provision of information, personal support and practical assistance to facilitate their first experiences of the Subcommittee plenary (it being recognized that there is a close interconnection between each of these);
 - (c) The desirability of revising the Subcommittee rules of procedure regarding the timing of the election of the Bureau.
64. The working group on reprisals highlighted, inter alia,
- (a) The need to consider developing a formal policy position on responding to the risk of reprisals and the form that such a policy should take;
 - (b) The need to consider the relationship between the principle of confidentiality and the need to ensure the absence of reprisals;
 - (c) The need to consider the role and responsibilities of NPMs in relation to the risk of reprisals.
65. The working group on procedural issues, including difficulties of access to places of detention, has highlighted, inter alia,
- (a) The need to consider practical responses to denial or delay of access to some places of detention;
 - (b) The need to consider practical responses to difficulties in gaining entry to some rooms/areas in some places of detention;
 - (c) The need to consider practical responses to barriers placed upon meeting with some persons deprived of liberty, or meeting with them under suitable conditions;
 - (d) The use of information provided by civil society organizations;
 - (e) Other special procedural issues faced when visiting prisons and police stations.

C. Issues arising from the work of the Subcommittee

66. The Subcommittee wishes to draw attention to some specific issues which have arisen in the course of its work. It has sometimes been unable to spend as much time as it had hoped in detention facilities due to delays in gaining admission or dealing with other bureaucratic barriers. This is a regrettable waste of valuable resources, and States parties should ensure that the Subcommittee is able to enjoy immediate access to all places of detention, areas within places of detention, persons deprived of their liberty and documentation, in accordance with the provisions of the Optional Protocol. Similarly, while the Subcommittee recognizes the continued efforts and support of civil society in the prevention of torture and other cruel, inhuman or degrading treatment or punishment, it

would like to stress the importance of ensuring the information and materials provided to the Subcommittee are as accurate and as up to date as possible.

67. The Subcommittee is of the view, as stated previously in a number of public documents, that the term “places of detention”, as found in article 4 of the Optional Protocol, should be given a broad interpretation, to include, inter alia, civil and military prisons, police stations, pretrial detention centres, psychiatric institutions and mental health centres, migrant detention centres, juvenile detention centres and social care institutions. The term extends to any place, whether permanent or temporary, where persons are deprived of their liberty by, or at the instigation of, or with the consent and/or acquiescence of, public authorities. Therefore, an interpretation of “places of detention” that is limited to such traditional places of deprivation of liberty as prisons would be overly restrictive and, in the view of the Subcommittee, clearly contrary to the Optional Protocol.

68. In its fourth annual report (CAT/C/46/2) the Subcommittee commented on its approach to individual cases of torture and ill-treatment encountered during visits to places of detention. It has since learned that this statement has been misunderstood, and been taken as suggesting that the Subcommittee and NPMs should not engage with individual cases at all. This is not the position of the Subcommittee. While it is emphatically not the case that the Subcommittee investigates individual allegations, during many of its country visits it has documented alleged cases of torture and ill-treatment and has included descriptions of such cases in its reports. As explained in the fourth annual report, the Subcommittee finds it useful to analyse such cases in order to identify underlying gaps in protection and make the most efficacious preventive recommendations. This does not mean that the Subcommittee cannot raise issues arising from specific situations which it encounters, and it has occasionally done so. However, this entails disclosing the identity of a victim of torture or ill-treatment, which requires not only the informed consent of the alleged victim but also a careful consideration of the risk of reprisals or other deleterious consequences of doing so. The Subcommittee believes that the misunderstanding of its position may be because it states in its fourth annual report that the Subcommittee has no power to undertake inquiries or to offer reparation. However, the Subcommittee can and does recommend that the authorities do so, and if such recommendations are ignored or not implemented without good reason, the Subcommittee would consider it a lack of cooperation.

V. Substantive issues

69. In this chapter the Subcommittee wishes to set out its current thinking on a number of issues of significance to its mandate.

A. The role of judicial review and due process in the prevention of torture in prisons

1. Summary

70. The erroneous premise that due process ends at the moment of sentencing, and that it does not apply to the actual custodial conditions and regime, encourages the use of torture and ill-treatment in places of detention, and more specifically in prisons for adults and juveniles. In addition to complaints procedures and supervision of such places of detention, there is a need for States to provide a special judicial or similar mechanism to protect the rights of all convicted and pretrial detainees.

2. Introduction

71. In the specific case of prisons, various cultural factors, such as the idea that inmates are “outside society” or that they are “dangerous” persons, or the reactions of the media to public insecurity, contribute to the neglect and vulnerability of people serving prison sentences and those who are in pretrial detention.

72. To overcome this lack of protection for inmates, it must be established in law that detainees retain fundamental rights (including the right to integrity and freedom of conscience) and only a few of their rights are suspended (such as freedom of residence) or restricted (such as the freedoms of assembly and expression). In addition, it must be established and guaranteed that they acquire some rights at the time of detention (such as the rights to food, decent living conditions and health services). There is a lack of mechanisms, procedural rules and remedies that are necessary to enforce this legal framework. In reality, detainees have “rights without guarantees”.

3. Lack of institutional protection

73. The lack of legal protection in places of detention is also related to the rehabilitative or correctional conceptions of punishment,⁶ which have contributed to the predominance of a model whereby prison authorities, technical staff and security guards unilaterally decide the punishment regime.

4. Due process

74. Due process means that certain procedures should be followed so that the State can legitimately give effect to fundamental rights; that is, it establishes a set of requirements that must be observed so that individuals can defend themselves properly against any act by the State that might affect their rights.

75. Within the criminal justice system, due process should cover not only the determination of penalties but also the safeguarding and protection of all detainees, providing a framework for the relationship between inmates and prison authorities in terms of rights and obligations, including means of obtaining defence and legal remedies.

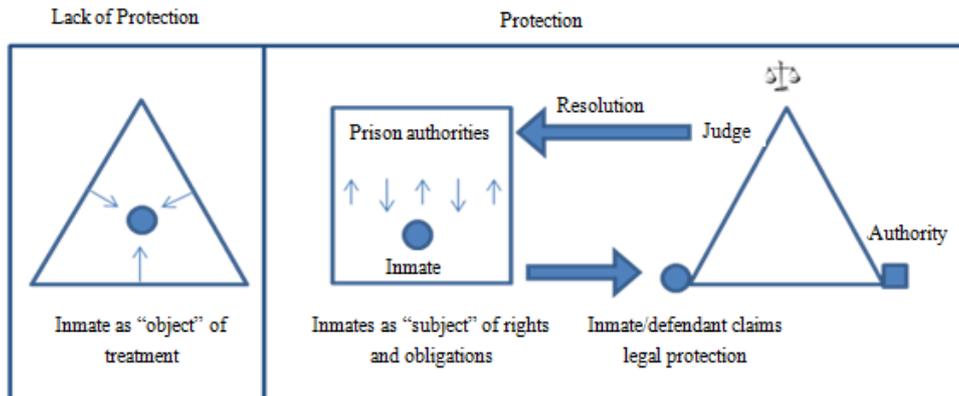
5. Judicial control

76. Judicial intervention during the period of confinement, by judges other than those who determined the criminal charges, goes hand in hand with due process. In order for inmates to be able to invoke the standards protecting them from negligent or abusive prison authorities, there must be an impartial third party to enforce those norms, given that no one should act as both judge and jury. It is also for this reason that judges on prison enforcement matters should act only within the framework of judicial procedures conducted on an adversarial basis. As part of the criminal justice system, their role is clearly differentiated from that of monitoring bodies, and their resolutions must be fully enforceable against any government authority.

⁶ This involves a vision “shared by the three political and cultural trends that have contributed to the formulation of the [Italian] Constitution and subsequent prison reform: the Catholic trend, which conceives of punishment as reformation of the criminal; the liberal-conservative trend, which is the source of the therapeutic and integrationist view of punishment; and communism in its Leninist and Gramscian versions, inspired by punishment regimes intended to educate and resocialize criminals. Endorsed by such a convergence of cultures, prison reform has been achieved at the price of its transformation into unequal, atypical and uncertain punishment, and the resulting dissolution of guarantees with regard to punishment”. Luigi Ferrajoli, *Derecho y razón* (Madrid, Trotta, 1995), p. 720.

77. If relief is available from the prison administration, the claimant (that is, the inmate making a complaint) might be required to pursue that avenue of redress before proceeding to seek redress from a court.

78. The administrative authority is in charge of executing sentences and pretrial detention orders on a regular basis; however, cases lodged during these periods should fit into a trilateral relationship in which a specialized judge or a similar independent authority occupies the apex of the pyramid while the prison authorities and the inmate are situated at the lower corners in keeping with the equality of arms principle. Under a human rights approach, the inmate ceases to be the “object” of treatment and becomes a “subject” in a legal relationship in order to assert his or her rights:



79. The availability of attorneys with an expertise different from those in charge of criminal defence is essential in order to ensure that persons convicted and in pretrial detention have access to justice in prison.

80. The existence of torture and ill-treatment in places of detention is not a chance occurrence; rather, it is fostered by legislative neglect and judicial inactivity that create a breeding ground for these practices. Progress can be achieved in this area through “effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction” (art. 2, para. 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which applies to all signatories to the Optional Protocol).

B. Indigenous justice and the prevention of torture

1. Cultural diversity and indigenous justice

81. The protection and promotion of the diversity of cultural expressions presuppose the recognition of equal dignity of and respect for all cultures, including the cultures of persons belonging to minorities and indigenous peoples.⁷

82. Respect for cultural diversity implies building an equal relationship between cultures and overcoming imbalances in power relationships based on ideas of superiority or inferiority. It also presupposes that any traditional practice from any culture, including that of the West, which infringes the dignity of individuals and peoples will be challenged.

⁷ Convention on the Protection and Promotion of the Diversity of Cultural Expressions, art. 2, para. 3.

2. Concept of indigenous justice

83. The recognition of indigenous justice forms part of the collective rights of indigenous peoples as set out in international human rights law. International Labour Organization (ILO) Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries establishes that indigenous and tribal peoples “shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights” (art. 8, para. 2).

84. The United Nations Declaration on the Rights of Indigenous Peoples recognizes that indigenous peoples have the right to maintain and strengthen their own legal institutions (art. 5) as well as the right not to be subjected to forced assimilation or destruction of their culture (art. 8, para. 1). This international instrument further establishes that indigenous peoples have the right to promote, develop and maintain, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards (art. 34) and to determine the responsibilities of individuals to their communities (art. 35).

3. Relationship between the national justice system and the indigenous justice system

85. The coexistence of various legal systems within territories that are under the jurisdiction of a single State represents a crucial challenge for building relationships based on interculturality. The relationship between the national justice system and the indigenous justice system must be based on an equal valuation and recognition of the legal system (whether it be of a positive, customary or mixed nature) and of the authorities who have the power to apply it. A relationship based on respect, cooperation and communication is indispensable.

86. The indigenous justice system should be considered as part of a whole and as having a dialectical and intercultural relationship with the national justice system, so that each system can inspire and enrich the other. This “legal interculturality” is clearly reflected in ILO Convention No. 169, which establishes that “in applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws”, for which purpose “procedures shall be established ... to resolve conflicts which may arise in the application of this principle” (art. 8).

4. Limits of the national justice system in proceedings against indigenous persons

87. In cases where the national justice system has jurisdiction over persons of indigenous cultural backgrounds, adequate legal instruments need to be provided to enable, where appropriate, an assessment of the responsibility of these persons (taking into account, for example, cultural predispositions or other grounds that might justify an exemption from criminal liability). In such cases, it is always preferable to try the case within the indigenous justice system.

88. Clearly, any form of imprisonment imposed on indigenous persons by public authorities – including traditional authorities who may, in exceptional cases, hold the person in custody – should be the exception, not the rule. In such circumstances, and especially when the detention is illegal, there is a higher risk of torture or cruel, inhuman or degrading treatment.

89. The legitimacy of detention must be judged according to its lawfulness and proportionality and, in the case of indigenous persons, must take into account various other principles to ensure that it is not an arbitrary measure that carries a risk of torture. This means that, in addition to the legal safeguards that apply to every individual in custody, particular care must be taken to ensure:

(a) That indigenous persons are informed, in their own language, of the reasons for their detention and of their rights;

(b) That their close family or, failing that, the authorities of their community are informed of their detention;

(c) That, from the moment they are detained, they have access, free of charge, to a public defender who speaks their language (or who has an interpreter) and who is familiar with indigenous law or its basic principles, including the possibility of having the matter handled wholly within the indigenous justice system where applicable, or of calling on cultural or anthropological expertise;

(d) That all authorities involved in any way in matters of detention, investigation or sentence enforcement (for example, the public defender's office, the public prosecution service, the criminal investigation police, the officiating judges and other justice officials, and the prison authorities) are familiar with and uphold, with discretion and with a view to taking affirmative action, the minimum legal safeguards and the rights of indigenous persons as recognized by the relevant international instruments;

(e) That when indigenous persons have been legitimately detained under exceptional circumstances, they are held in conditions which are consistent with their personal dignity, and that their right to personal integrity is guaranteed by the State;⁸

(f) That they are placed in the detention centre nearest to their indigenous community and their family, so that they are able to receive frequent visits and follow their traditional practices and customs, which will minimize the risk of their being isolated from their relatives, culture and religion;

(g) That indigenous persons in places of detention are not segregated or subjected to discrimination on account of their status. Nor should they be pushed to abandon their language, traditional dress or customs by means of threats, mockery or humiliation;

(h) That indigenous women in detention enjoy the same protection as indigenous men, and that their dignity is respected as regards practices related to their sexuality and traditional values associated with, inter alia, their appearance, hair, clothes, and nudity;

(i) Indigenous detainees have the right to freedom of expression in the language of their preference. Any ban or restriction on the use of this language is a violation of the rules on the collective treatment of detainees and is particularly serious when the language represents part of a person's identity as a member of his or her indigenous community.

5. Links between indigenous justice and the prevention of torture

(a) Prevention of torture in the indigenous justice system

90. The recognition of indigenous justice as part of the collective rights of indigenous peoples confers a responsibility on indigenous authorities exercising their power to settle disputes. This responsibility involves observance not only of the norms, values and principles which constitute their law but also of internationally recognized human rights, such as the right to personal integrity, and the prohibition of torture and cruel, inhuman and degrading treatment.

⁸ See principle 1 of the Basic Principles for the Treatment of Prisoners, adopted by the General Assembly in its resolution 45/111.

91. It is essential to distinguish acts of torture or cruel, inhuman and degrading treatment from practices which are, according to the world view of indigenous peoples, forms of spiritual purification and healing for individuals who have been punished under the indigenous justice system. From an intercultural perspective, these practices, such as ice-cold baths or the use of stinging nettles to purify perpetrators, are consistent with the assertion in the Convention against Torture that “the term ‘torture’ ... does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions (art. 1).

(b) Role of indigenous justice in the prevention of torture

92. In modern societies, torture and ill-treatment are closely linked to the notion of State power. In traditional societies, social organization is completely different, as justice is based mainly on consensus and mediation. Thus, the initial stage of what we understand as criminal proceedings does not necessarily involve deprivation of liberty. Torture and ill-treatment are therefore quite rare in traditional societies.

93. Custodial sentences, which the State justice system usually imposes in criminal cases, are barely used in the indigenous justice system, as community ties determine the structure of the individual and collective identity of community members, and imprisonment directly undermines these ties. For many indigenous persons, imprisonment constitutes cruel, inhuman and degrading treatment and even a form of torture.

94. Strengthening the indigenous justice system and its forms of social control and punishment for violating its laws could therefore serve to prevent torture and cruel, inhuman or degrading treatment of indigenous persons.

VI. Looking forward

95. The end of this reporting period sees the departure of 5 of the 10 founder members of the Subcommittee who were elected in October 2006 and who were ineligible for re-election to a further term of office at the meeting of States parties in October 2012. They, and their experiences, will be much missed and it is unfortunate the Subcommittee has lost so many experienced members at this time of transition and development. Departures, however, bring with them the opportunity to welcome new colleagues and the Subcommittee is looking forward with anticipation to welcoming its new members in 2013 and to working with them to develop further new, innovative and effective means of fulfilling its mandate of preventing torture and ill-treatment.

A. Plan of work for 2013

96. The plan of work for 2012 was ambitious, both in scale and in kind. Hitherto, the Subcommittee had undertaken a maximum of three visits in a 12-month period. In order to respond to the increasing number of States parties, and the opportunities presented by the increased membership, that number was doubled to six. Moreover, three of the visits were of an innovative nature, focusing on the establishment and work of the NPM, and thereby bringing into focus the Subcommittee’s responsibility under article 11 (b) (ii) and (iii) of the Optional Protocol. For operational reasons, one projected visit, that to Gabon, will now be conducted in 2013.

97. The programme for 2013 looks to consolidate the achievements of 2012 in two ways. First, it maintains the increased tempo of its activities by conducting a further six visits, in addition to the postponed visit from 2013. Secondly, it includes a broader range of forms of visit within a single year than has previously been the case. To that end, the Subcommittee decided at its seventeenth session (June 2012) to conduct the following

country visits in 2013: regular country visits to New Zealand, Peru and Togo; NPM advisory visits to Armenia and Germany; and a follow-up visit in accordance with article 13, paragraph 4, of the Optional Protocol.

98. As in previous years, the Subcommittee took account of various factors when selecting countries for visits, giving careful consideration to factors such as the period of time since ratification, the situation as regards the establishment and operation of the NPM, geographic diversity, logistical issues concerning the size and complexity of the State, factors relating to the preventive monitoring at a regional level, the work of other United Nations mechanisms and agencies and perceptions of the benefit to be derived from undertaking a visit in the year ahead.

99. The Subcommittee hopes that as a result of its innovative and evolving working practices it will become more effective and more efficient in achieving its mandate. Working with NPMs has enabled greater strides to be taken in establishing a continued and constructive preventive dialogue. Furthermore, the ad hoc thematic groups are a means through which issues of importance are highlighted and probed.

100. During 2013, in addition to further developing its jurisprudence, the Subcommittee will focus its attention on systemic issues related to the interaction of the Subcommittee with NPMs, Standard Minimum Rules for the Treatment of Prisoners, induction and continuous training, reprisals and procedural issues (including difficulties of access to places of detention).

B. Laying the foundations for future growth and development

101. This reporting period sees the departure of 5 of the 10 founder members of the Subcommittee elected in October 2006 and who were ineligible for re-election to a further term of office. The Subcommittee wishes to place on record its profound sense of loss at the departure of many of its most experienced members who, with their colleagues, established the Subcommittee and laid the foundations for the creation of the Optional Protocol system. They have all made indelible contributions to the development of the Subcommittee and to its work and their absence will be keenly felt. Departures, however, bring with them the opportunity to welcome new colleagues, and the Subcommittee is looking forward with anticipation to welcoming the six new members elected to it by States parties.

102. At its eighteenth session the Subcommittee reflected on its first six years of experience and noted the growing focus on its work related to NPMs, the growth in requests for participation in intersessional activities, and the need to develop further the pace and range of its own visiting programmes. This reflection was also informed by the realities of the support made available to the Subcommittee by the OHCHR. The Subcommittee wishes to pay tribute to the outstanding level of commitment shown by its secretariat, which is reflected in the astonishing workload which staff bear on the Subcommittee's behalf. The Subcommittee is gratified to note the desire to expand support for the Subcommittee set out in the report of the High Commissioner for Human Rights on the treaty body strengthening process (A/66/860). Yet the Subcommittee is conscious that it is perfectly obvious that neither the commitment and dedication of the secretariat nor the modest expansion in resourcing as argued for by the High Commissioner can keep pace with the demands which States parties, NPMs and CSOs are rightly placing on the Subcommittee to fulfil its obligations under the Optional Protocol. In 2012 the Subcommittee was able to conduct only two visits under article 11 (a) of its mandate, while having 65 States parties. This suggests a rate of one such visit every 20 years or more. This is not compatible with the spirit of conducting "regular" visits and ongoing dialogue. We wish to visit all State parties on a cycle similar to the reporting cycles of other treaty bodies

about every four or five years. This implies a step change in our current workload, and in our levels of support. Effective prevention demands no less.

103. Moreover, each year the work of the Subcommittee increases exponentially. The establishment of each new NPM and the conduct of each new visit set in motion another train of engagement and dialogue which is ongoing and operates in parallel with, rather than as a substitute for, those already under way. The Subcommittee continues to believe that, in addition to the step change in the level of resources, financial and human, which it desperately needs, it is necessary for the Subcommittee to continue to refine its working practices, broadening its range of partners in order to maximize its preventive impact, and to re-evaluate the manner in which it uses those resources which are at its disposal, including the shape, size and scope of its programme of regular visits.
