



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

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

(January - December 2011)

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I. Introduction

1. This report is the first to cover the work of the expanded Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹ (the Subcommittee) of 25 members – making the Subcommittee the largest of the United Nations human rights treaty bodies. It has been a stimulating year for the Subcommittee, with reflection on past achievements and the building blocks for future change put in place, whilst it has continued to exercise both its visiting and national preventive mechanism (NPM) mandate. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Optional Protocol) continues to attract new States parties, and interest in its work continues to grow. This report follows the model established in the Subcommittee's fourth annual report and focuses on highlighting recent developments, introducing some matters of concern to the Subcommittee, setting out its position regarding a number of substantive issues and, finally, casting a forward look to the year ahead.

2. The Subcommittee wishes to emphasize, as reflected throughout the report, that the opportunities presented by its expansion can only be achieved if those with a stake in the Optional Protocol system – the Subcommittee itself, the NPMs, States parties and the United Nations as a whole – fully embrace the spirit of prevention in a focused yet flexible fashion, to benefit those stakeholders with the greatest interest in the Optional Protocol system, namely persons deprived of their liberty who are at risk of torture and ill-treatment.

II. The year in review

A. Participation in the Optional Protocol system

3. As of 31 December 2011, 61 States are party to the Optional Protocol.² Since January 2011, four States have ratified or acceded to the Optional Protocol: Bulgaria (1 June 2011), Panama (2 June 2011), Tunisia (29 June 2011) and Turkey (27 September 2011). In addition, four States have signed the Optional Protocol during the reporting period: Greece (3 March 2011), Venezuela (1 July 2011), Cape Verde (26 September 2011) and Mauritania (27 September 2011).

4. As a result of the increase in the number of States parties, the pattern of regional participation has changed somewhat, the number of parties in each region is now as follows:

States parties by region

Africa	11
Asia	6
Eastern Europe	17

¹ Established following the entry into force in June 2006 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. For the text of the Optional Protocol, see www2.ohchr.org/english/law/cat-one.htm. In accordance with the Optional Protocol (art. 16, para. 3), the Subcommittee presents its public annual reports to the Committee against Torture.

² For a list of the States parties to the Optional Protocol, see the Subcommittee's website.

Group of Latin American and Caribbean States (GRULAC)	14
Group of Western European and Other States (WEOG)	13

5. 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 24)

Africa	8
Asia	2
Eastern Europe	1
Group of Latin American and Caribbean States (GRULAC)	2
Group of Western European and Other States (WEOG)	11

B. Organizational and membership issues

6. During the reporting period (1 January to 31 December 2011), the Subcommittee held three one-week sessions at the United Nations Office in Geneva, from 21 to 25 February, from 20 to 24 June and from 14 to 18 November 2011.

7. The Subcommittee membership significantly changed in 2011.³ On 28 October 2010, at the third Meeting of States Parties to the Optional Protocol, five Subcommittee members were elected to fill the vacancies arising in respect of members of the Subcommittee whose terms of office would expire on 31 December 2010. Furthermore, in conformity with article 5, paragraph 1, of the Optional Protocol, 15 members were elected in order to expand the membership of the Subcommittee to 25 members, following the fiftieth ratification in September 2009. In order to ensure an orderly handover of membership and in accordance with established practice, the terms of office of 7 of the additional 15 members were reduced to two years by ballot. The terms of office of all the newly elected members started on 1 January 2011 and, in conformity with the Subcommittee rules of procedure, they made a solemn declaration at the opening of the February 2011 session before assuming their duties.

8. In view of its expansion, the Subcommittee rules of procedure were revised so as to provide for the election of an expanded Bureau, comprising the Chairperson and four Vice-chairpersons, the members of which serve for a period of two years. The Bureau, which was elected in February 2011 and continues in office until February 2013, comprises Malcolm Evans as Chairperson and Mario Coriolano, Zdenek Hajek, Suzanne Jabbour and Aisha Muhammad as Vice-Chairpersons. Ms. Muhammad is also the Rapporteur of the Subcommittee.

9. In order to facilitate the most effective, efficient and inclusive means of working as an enlarged Committee, it was agreed that each Bureau member should have a distinct responsibility for which he/she takes primary responsibility, under the overall leadership of the Chair and in cooperation with each other. Based on the Optional Protocol mandate as set out in article 11, the four Vice-Chairpersons have the following primary responsibilities: Mr. Coriolano: National Preventive Mechanisms, Mr. Hajek: Visits, Ms. Jabbour: External Relations, Ms. Muhammad: Jurisprudence.

³ For a list of members and the duration of their mandate, see the Subcommittee's website (www2.ohchr.org/english/bodies/cat/opcat/index.htm).

10. The Subcommittee also revised its allocation of internal responsibilities, largely to reflect, support and encourage its growing engagement with national and regional partners. A new system of regional focal points was also put in place. The role of these focal points is to undertake liaison and facilitate coordination of the Subcommittee's engagement within the regions they serve. Focal points for Africa, Asia-Pacific, Europe and Latin America were appointed at the fourteenth session and are as follows: Africa: Fortuné Zongo, Asia-Pacific: Lowell Goddard, Europe: Mari Amos, Latin America: Víctor Rodríguez-Rescia. Likewise, a new system of regional task forces on national preventive mechanisms has been established. Under the leadership of the Subcommittee Chairperson and Subcommittee Vice-Chairperson on National Preventive Mechanisms, and under the responsibility of the above focal points, each regional task force is responsible for work on NPM-related matters. Furthermore, the Subcommittee decided to establish working groups on dialogue arising from visits under the leadership of the Subcommittee vice-Chair for visits as well as a working group on security matters and a working group on medical issues. Further information on these developments is provided in chapter IV, section A, below.

C. Visits conducted during the reporting period

11. The Subcommittee carried out three visits in 2011. From 16 to 25 May 2011, it visited Ukraine, the second country visited by the Subcommittee in Europe (following the visit to Sweden in March 2008).

12. From 19 to 30 September 2011, the Subcommittee visited Brazil, the fifth country visited by the Subcommittee in Latin America (following the visits to Mexico in August-September 2008, to Paraguay in March 2009, to Honduras in September 2009 and to Bolivia in August-September 2010).

13. From 5 to 14 December 2011, the Subcommittee visited Mali, the fourth country visited by the Subcommittee in Africa (following the visits to Mauritius in October 2007, to Benin in May 2008 and to Liberia in December 2010).

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

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

15. Six Subcommittee visit reports have been made public following a request from the State party (Benin, Honduras, Maldives, Mexico, Paraguay and Sweden), as provided for under article 16, paragraph 2, of the Optional Protocol, including one in the reporting period: Benin (in January 2011). Four replies (from Benin, Mexico, Paraguay and Sweden) have also been made public at the request of the State party, including Benin and Mexico during the reporting period (in January and October 2011).

16. In conformity with past practice, the Subcommittee systematized its practice regarding the formal elements of its dialogue arising from its visits. States parties are requested to provide a reply within a six-month deadline giving a full account of action taken to implement the recommendations contained in the visit report. At the time of the submission of the present report, 7 out of 13 States parties visited by the Subcommittee had provided replies: Mauritius in December 2008; Sweden in January 2009; Paraguay in March 2010, Benin in January 2011, Lebanon (partial reply) in January 2011, Mexico in October 2011 and Bolivia in November 2011. The replies from Bolivia, Lebanon and Mauritius remain confidential, while those from Benin, Mexico, Paraguay and Sweden

have been made public at the request of those States parties. The Subcommittee has provided its own responses and/or recommendations to the submissions of Benin, Lebanon, Mauritius and Sweden, while a follow-up visit was undertaken to Paraguay, with a follow-up visit report transmitted to the State party. Both the follow-up visit report and the follow-up reply have been made public following requests from Paraguay in May and June 2011. Reminders were also sent to States parties that have not yet provided replies to the Subcommittee visit reports. It should be noted that the six-month deadline for submission of replies had not expired for Liberia, Ukraine and Brazil during the reporting period. 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.

E. Developments concerning the establishment of national preventive mechanisms

17. Out of 61 States parties, 28 have officially notified the Subcommittee of the designation of their NPMs, information concerning which is listed on the Subcommittee's website.

18. Two official notifications of designation were transmitted to the Subcommittee in 2011: the Former Yugoslav Republic of Macedonia and Serbia. It should be noted that, in the cases of Chile, Mali, Mauritius, Senegal and Uruguay, the designated bodies have not yet commenced their functioning as NPMs.

19. Thirty-three 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 five States parties (Bulgaria, Pakistan, Panama, Tunisia and Turkey). Furthermore, four States parties (Bosnia and Herzegovina, Kazakhstan, Montenegro and Romania) have made declarations under article 24 of the Optional Protocol permitting them to delay designation for up to an additional two years.

20. Twenty-five States parties have therefore not complied with their obligation under article 17, which is a matter of major concern to the Subcommittee. It should, however, be noted that the Subcommittee understands that four States parties (Armenia, Croatia, Nigeria and Ukraine) have designated NPMs, but that it has not yet been officially notified thereof.

21. The Subcommittee has continued its dialogue with all States parties which have not yet designated their NPMs, encouraging them to inform the Subcommittee 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, etc.).

22. The Subcommittee has also established and maintained contact with NPMs themselves, in fulfilment of its mandate under article 11 (b) of the Optional Protocol. At its thirteenth session, the Subcommittee held a meeting with the Estonian NPM in order to exchange information and experiences and discuss areas for future cooperation. At its fourteenth session, the Subcommittee held a similar meeting with the Georgian NPM. Finally, at its fifteenth session, the Subcommittee held a meeting with the Honduras (meeting supported by the Association for the Prevention of Torture (APT)) and Costa Rican NPMs. During this session, it also held a meeting with the Senegalese authorities in order to discuss measures taken to enable the designated NPM to become operational. The Subcommittee is also pleased that 18 NPMs have transmitted their annual reports during 2011, which have been posted on its website.

23. 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, the International Federation of ACAT (Action by Christians for the Abolition of Torture) (FIACAT), Penal Reform International (PRI) and the Optional Protocol Contact Group), NPMs, regional bodies such as the African Commission on Human and Peoples' Rights, the Committee for the Prevention of Torture in Africa (CPTA), the Inter-American Commission on Human Rights (IACHR), 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 Office of the United Nations High Commissioner for Human Rights (OHCHR). These events included:

- (a) January 2011: High-level round-table on detention conditions in the European Union, held by the European Commission in Brussels;
- (b) March 2011: Workshop on the Optional Protocol held in Amman, Jordan by the OHCHR-Middle East Regional Office;
- (c) March 2011: International Conference on Enhancing Visits to Places of Detention: Promoting Collaboration held in Washington by the American University Washington College of Law and APT;
- (d) April 2011: Seminar on the Implementation of the Optional Protocol and the NPM in Burkina Faso held by APT and FIACAT;
- (e) May 2011: A series of consultations with national authorities and civil society representatives held in Brazil by APT;
- (f) June 2011: Regional Ombudsman Conference on the Role of the Ombudspersons in Combating Discrimination and Preventing Torture held by the Ombudsman of the former Yugoslav Republic of Macedonia and ODIHR-OSCE in the former Yugoslav Republic of Macedonia;
- (g) July 2011: National Dialogue on the implementation of the Optional Protocol to the Convention against Torture, held in the Maldives by APT and the Subcommittee;
- (h) July 2011: Seminar on the effective functioning of the Senegalese NPM in Dakar held by CPTA;
- (i) September 2011: Regional high-level conference on the role of National Human Rights Institutions (NHRIs) in the prevention of torture in Africa, held by APT and the National Council for Human Rights of Morocco in Rabat;
- (j) September 2011: Conference on OPCAT (Optional Protocol to the Convention against Torture) and Ombudsman, held by the International Ombudsman Institute in Poland;
- (k) September 2011: OSCE/ODIHR side-event meeting on the establishment of NPMs in Kazakhstan and Kyrgyzstan, held by PRI in Poland;
- (l) October 2011: Conference on Prevention of Torture, Implementation of NPMs in Argentina held by APT;
- (m) November 2011: Global Forum on the OPCAT held by APT in Geneva;
- (n) November 2011: Seminar on identifying national implementation mechanisms for the prevention of torture and other ill-treatment held in Addis Ababa by the

Universities of Bristol and Pretoria and the African Commission on Human and Peoples' Rights;

(o) November 2011: Seminar on the establishment of a Cambodian NPM held in Phnom Penh by OHCHR;

(p) November 2011: Regional consultations in the Americas, Cooperation between United Nations and Regional Human Rights Mechanisms, Prevention of Torture, held in Washington by OHCHR and IACHR;

(q) December 2011: Regional consultation for Europe on enhancing cooperation between United Nations and regional human rights mechanisms on prevention of torture, especially persons deprived of their liberty, held in Geneva by OHCHR.

24. In the framework of the European NPM Project of the Council of Europe/European Union, with APT as implementing partner, the Subcommittee has participated in four thematic workshops: (a) on security and dignity in settings of deprivation of liberty, in France in March 2011; (b) on how to collect and check and double-check information in relation to (the risks of) ill-treatment in places of deprivation of liberty, in Estonia in June 2011, (c) the protection of persons belonging to a particularly vulnerable group in places of deprivation of liberty, in Azerbaijan in October 2011 and (d) on medical issues, in Poland in December 2011; and two on-site visits and exchange of experiences: (a) with the Albanian NPM in June-July 2011; and (b) the Armenian NPM in October 2011. The Subcommittee also participated in consultations on the Ukrainian NPM in Kiev in October 2011 and in the 3rd Annual Meeting of the NPM Project Heads and Contact Persons in Slovenia in December 2011.

25. The Subcommittee would like to take this opportunity to thank the organizers of these events for the invitations to participate which were extended to them.

F. Contributions to the Special Fund under article 26 of the Optional Protocol

26. As at 31 December 2011, the following contributions to the Special Fund established by the Optional Protocol had been received: US\$29,704.98 from the Czech Republic; US\$5,000 from the Maldives, US\$82,266.30 from Spain, and US\$855,263.16 from the United Kingdom of Great Britain and Northern Ireland. The table below shows the contributions currently available.

Contributions received from 2008 to 2011

<i>Donors</i>	<i>Amount(in United States dollars)</i>	<i>Date of receipt</i>
Maldives	5 000.00	27 May 2008
Czech Republic	10 000.00	16 November 2009
Czech Republic	10 271.52	27 December 2010
Czech Republic	9 433.46	12 October 2011
Spain	25 906.74	16 December 2008
Spain	29 585.80	10 November 2009
Spain	26 773.76	29 December 2010
United Kingdom of Great Britain and Northern Ireland	855 263.16	20 June 2011

27. The Subcommittee wishes to express its gratitude to these States for their generous contributions.

28. 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 as well as education programmes of the national preventive mechanisms. The Subcommittee is convinced that the Special Fund has the potential to be a valuable tool in furthering prevention and it is therefore pleased that a scheme to operationalize the fund has been initiated within the reporting period. The Special Fund is administered by OHCHR (its Grants Committee acting as an advisory body to the High Commissioner for Human Rights) in conformity with the United Nations Financial Rules and Regulations and the relevant policies and procedures promulgated by the Secretary-General. This interim scheme will be revisited in 2012. The Subcommittee is pleased to report that the Administration of the Special Fund will consult the Subcommittee on the following basis: (1) the Subcommittee will identify, on an annual basis, thematic priorities for the annual call for applications, possibly by country, and with the objective of funding the implementation of recommendations contained in Subcommittee visit reports, (2) the Subcommittee Bureau will be kept informed of the applications received and the grants awarded; members of the Subcommittee may be consulted on issues arising from applications, and if any additional questions arise and, when necessary, a meeting with the Chairperson of the Subcommittee may be held. The Subcommittee identified the following thematic priorities for the current round: notification of the fundamental rights of detainees in a language which they can understand; improving recreational and/or vocational activities for juveniles in detention; basic training programmes for detention personnel (with the inclusion of a focus on health care); and any other specific recommendation in the visit reports that details a pressing and compelling need. Full details of the scheme have been publicized by the Secretary-General in his report to the General Assembly and the Human Rights Council on the operations of the Special Fund (A/65/381). The Subcommittee very much hopes that the implementation of the above scheme will encourage further donations to the Special Fund.

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

A. International cooperation

1. Cooperation with other United Nations bodies

29. As provided for under the Optional Protocol, the Subcommittee Chairperson presented the fourth Subcommittee annual report to the Committee against Torture during a plenary meeting held on 10 May 2011. In addition, the Subcommittee and the Committee took advantage of their simultaneous sessions in November 2011 to meet to discuss a range of issues of mutual concern such as the concept of torture and other cruel, inhuman or degrading treatment or punishment; the Subcommittee strategic focus for 2012; the methodology of information sharing between both treaty bodies; and the provisions of the Optional Protocol concerning both bodies in relation to applicable methodology.

30. In conformity with General Assembly resolution 65/205 of 28 March 2011, the Subcommittee Chairperson presented the fourth Subcommittee annual report (CAT/C/46/2) to the General Assembly at its sixty-sixth session in New York in October 2011. This event also provided an opportunity for an exchange of information with the Chairperson of the Committee against Torture and the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment, who also addressed the General Assembly at that session.

31. The Subcommittee has continued to be actively involved in the inter-committee meetings (Inter-Committee working group on follow-up on 12 to 14 January 2011 and 12th Inter-Committee Meeting from 27 to 29 June 2011 in Geneva) and meetings of Chairpersons of human rights treaty bodies (from 30 June to 1 July 2011 in Geneva). Within that framework, a joint statement of Chairpersons of the UN Treaty Bodies on the 25th anniversary of the Declaration on the Right to Development was issued. The Subcommittee also contributed to the joint meeting with special-procedure mandate holders. In response to the High Commissioner's call to strengthen the treaty body system and as a follow-up to previous expert meetings dedicated to the work of treaty bodies, the Subcommittee participated at an informal technical consultation for States parties on treaty body strengthening held in Sion, Switzerland, in May 2011 and a further meeting in Dublin, Ireland in November 2011. It also attended several OHCHR activities, such as the international workshop on "the role of prevention in the promotion and protection of human rights" held in May 2011 in Geneva.

32. The Subcommittee continued its cooperation with the Special Rapporteur on Torture, for instance via its participation at a regional consultation on follow-up to country visits of the mandate of the Special Rapporteur held in Santiago de Chile in June 2011.

33. The Subcommittee joined the statement on the occasion of the International Day in Support of Victims of Torture on 26 June 2011 together with the Committee against Torture, the Special Rapporteur on Torture and the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture.

34. 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

35. In the framework of their ongoing cooperation, the Subcommittee and the International Committee of the Red Cross (ICRC) held a plenary meeting at the February 2011 session and an informal working meeting on the ICRC policy paper on torture and other cruel, inhuman or degrading treatment inflicted on persons deprived of their liberty, in Geneva, in June 2011.

B. Regional cooperation

36. Through its focal points for the liaison and coordination with regional bodies, the Subcommittee continued its cooperation with other relevant partners in the field of torture prevention, such the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights, the Council of Europe, the European Commission and ODIHR-OSCE. On 6 July 2011, members of the Bureau of the Subcommittee met the Council of Europe Committee for the Prevention of Torture (CPT) and discussed means of strengthening the cooperation between the two bodies.

C. Civil society

37. The Subcommittee has continued to benefit from the essential support provided by civil society actors, both the Optional Protocol Contact Group⁴ (present during the Subcommittee's February session) and academic institutions (in particular the Universities

⁴ For a list of members, see the Subcommittee's website.

of Bristol and Pretoria, and Arizona State University, the latter through its Centre for Law and Global Affairs at the Sandra Day O'Connor College of Law), both for the promotion of the Optional Protocol and its ratification, and for Subcommittee activities.

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

A. The development of the Subcommittee's working practices

38. In its previous annual reports the Subcommittee has noted that its limited membership and resources prevented it from developing all aspects of its mandate to the extent it would have wished. It is therefore pleased that its expanded membership now permits it to undertake a broader range of activities in greater depth than was previously possible.

39. As set out in chapter II, section B, in an effort to make it more efficient and effective, the Subcommittee Bureau has focused its internal operations on all aspects of its mandate outlined in Article 11 of the Optional Protocol. Led by the Subcommittee Chairperson, and reporting to the Plenary, the four Vice-Chairpersons now exercise primary responsibility for distinct areas of activity: Mr. Coriolano: National Preventive Mechanisms, Mr. Hajek: Visits, Ms. Jabbour: External Relations, Ms. Muhammad: Jurisprudence. It is hoped that this will aid external communication by providing clear primary interlocutors, whilst also streamlining internal decision-making and accountability.

40. In addition to the change in the modus operandi of the Bureau, the Subcommittee has now established regional task forces to enable more meaningful and structured engagement with NPMs. For the purposes of its internal work, the Subcommittee has divided States parties into four broad regions; Africa, Latin America, Asia-Pacific and Europe. Each of these task forces is headed by a Regional Focal Point, and is assisted by an NPM Team, which consists of members who are assigned responsibilities for specific countries. Each NPM Team is composed of a combination of Subcommittee members from within the region, as well as members from other regions. In allocating members to these NPM Teams consideration was also given to gender, experience, expertise, and where possible, a common working language. Further, the number of members in each NPM Team reflects the number of States within the given region, and the realities of Subcommittee membership and availability. The Subcommittee is hopeful that this change will make its work with NPMs more constructive and active. The teams will meet individually at each session of the Subcommittee, giving detailed consideration to the situation regarding NPMs within their region and advising the Plenary accordingly.

41. It was generally expected that an enlarged Subcommittee membership would result in its conducting more visits, this being the rationale for the expansion of membership provided for in the Optional Protocol. However, since financial constraints meant that this was not possible during the reporting period, and aware of the need to ensure that all members experienced the reality of the Subcommittee's visiting mandate as soon as possible, it was decided to increase the number of members participating in each visit in 2011. Whilst this has been invaluable as a means of inducting members of the enlarged Subcommittee, it has presented real challenges organizationally and logistically for the Subcommittee, its secretariat, OHCHR and States parties alike. Since the resources available are unlikely to permit an increased number of regular visits as currently conceived, the Subcommittee is looking to identify innovative ways of conducting visits. Hence, the Subcommittee has decided that it will seek to undertake visits, combining these where possible, which focus upon the various aspects of its preventive mandate, so that

regular visits, follow-up visits, establishing initial contact with new States parties and engaging with NPMs can all be accommodated. The Subcommittee has also adopted a methodology regarding the dialogue arising from its visits, and has established working groups which will be responsible for leading and co-ordinating the Subcommittee's activities in relation to countries already visited by the Subcommittee. This mechanism will also help Subcommittee members keep abreast of the situation in different countries. As part of this methodology, the Subcommittee has also decided to consider issuing invitations to representatives of States parties to meet with the Subcommittee where there is a reply outstanding.

42. In an effort to develop jurisprudence and provide guidance, the Subcommittee has formulated a working method whereby the Subcommittee, based on visits, reports and correspondence, identifies issues requiring clarification. To this effect, during 2011, the focus has been placed on the importance of human rights education in the prevention of torture, and on the correlation between corruption and the prevention of torture. Other issues that the Subcommittee wishes to highlight in this regard are mental health and detention, prevention of torture in prisons through the application of judicial procedural control and due process standards, and the correlation between legal aid, a system of public defence and the prevention of torture. Further, as OHCHR launched a Programme of Commemoration for the 25th anniversary of the United Nations Declaration on the Right to Development in 2011, the Subcommittee saw it appropriate to highlight the linkages between the right to development and the prevention of torture.

43. The expansion of membership has brought a new dynamic to the Subcommittee, and has paved the way for the Subcommittee to work in ways that were not practically possible before. While the Subcommittee is hopeful that it will continue to move forward and grow stronger in fulfilling its mandate, it wishes to note that time and logistical and budgetary constraints constitute the greatest challenge to formulating innovative ways through which all members can be utilized in the best possible manner to fulfil the mandate of the Subcommittee.

44. Current levels of resourcing means that States parties to the Optional Protocol, currently at 61, might only receive a full visit once in 20 years. This is of grave concern to the Subcommittee, as conducting visits to States parties is one of the most visible and effective ways through which it is able to perform its preventive mandate. These challenges also mean that the Subcommittee is unable to engage and work with NPMs, vital partners in the prevention of torture, in the most effective manner.

45. The Subcommittee would also like to highlight the fact that fiscal constraints mean that the secretariat of the Subcommittee, which has a direct impact on the quality of the work the Subcommittee is able to produce, is grossly understaffed at present. The major expansion in the size of the Subcommittee and in its workload has not been matched by a similar expansion in the secretariat, which has only increased marginally. This means that the secretarial support base for the Subcommittee is even more stretched than previously and is set to remain so, despite the creativity of the Subcommittee in formulating new ways to function more efficiently. The Subcommittee therefore encourages States parties to consider supporting the Secretariat by providing staff on secondment, as some States parties have done in the past.

B. The establishment of working groups

46. In 2011 the Subcommittee decided that a working group on security matters should be established under the leadership of the Vice-Chair for Visits, Mr. Hajek. This decision was made in order to address issues arising from field experience in relation to security arrangements, including the role of security officers, and was informed by the recognition

for the need to improve cooperation and coordination with United Nations security officers, to encourage restraint on the part of Subcommittee members and an increased awareness of the need for a location- and culture-specific approach to dress codes.

47. Similarly, taking into account the requirement to develop specialized standards for health care in places of detention, the Subcommittee decided that a working group on medical issues should be convened, initially comprising Subcommittee members with medical backgrounds and subsequently expanding to include members with other professional backgrounds. The Subcommittee also decided to task the Working Group with organizing a discussion within the Plenary on issues concerning visits to persons with mental health illnesses and disabilities during the course of 2012.

C. Issues arising from visits

48. During the year in review the Subcommittee has identified a number of issues in the course of its visits which it wishes to highlight, and upon which it is reflecting. To assist in these reflections the Subcommittee has produced a number of papers which are summarized below and which may be accessed in full through the web link provided. The Subcommittee welcomes input from those who might be able to assist it in its process of ongoing reflection on these subjects.

49. Recognizing that Subcommittee visits have tended to focus on traditional places of detention, with the expansion of the Subcommittee and subsequent range of expertise that is currently available within it, the Subcommittee has made an effort to increase its activities in relation to non-traditional places of detention during 2011, including immigration facilities and medical rehabilitation centres. In line with its mandate, the Subcommittee is hoping to continue this trend in 2012.

50. The enlargement of the Subcommittee, resulting in larger delegations during visits, meant that there were numerous logistical difficulties in planning and conducting visits. There was also concern that the delegations did not spend an adequate amount of time in some facilities, and while the Subcommittee will formulate ways through which the matter can be addressed, it should be appreciated that there are constraints (e.g. in relation to the use of interpreters and transportation) that require consideration, which makes it extremely difficult to balance out the issues. Nevertheless, larger delegations meant that the teams could split up and cover more places of detention than was possible in the past.

1. Mental health and detention

51. People with mental health problems and intellectual disabilities in many countries are at the lowest level of the social hierarchy. Discrimination, prejudice, deprivation of fundamental human rights and violation of their dignity are widespread. The United Nations Convention on the Rights of Persons with Disabilities, adopted in 2006, represents a paradigm shift in attitudes to persons with disabilities, who are no longer regarded as objects of pity requiring treatment, protection and charity, but as deserving of the full range of human rights on an equal basis with others. Monitoring mental health institutions will be a growing focus of the Subcommittee's activities in the future.

52. For this purpose, the Subcommittee has developed guidelines with a list of key issues to be explored, such as patients' living conditions, general health care for mental patients, the spectrum of psychiatric treatment, means of restraint for agitated and/or violent patients, legal and ethical safeguards in the context of involuntary placement, record keeping, medical confidentiality and informed consent, availability of qualified staff such as psychiatrists, psychiatric nurses and occupational therapists, training possibilities for staff, participation of patients in research, and sterilization and abortion without consent.

Methods of observation and interviewing patients and staff are suggested, followed by a detailed list of questions to be posed during the visit. Special attention should be directed at outdated treatment methods, such as the excessive use of electroconvulsive therapy (ECT), overdose of psychopharmacological drugs, seclusion and physical restraint, which sometimes (under the guise of treatment) are used as punishment or are administered due to lack of modern treatment facilities such as psychotherapy, social psychiatry services in the community and social rehabilitation programmes.

53. The key purpose of monitoring is to prevent discrimination, deprivation of human rights, neglect and ill-treatment. This includes monitoring a country's mental health policy, allocation of funding, i.e. whether there is a shift from the outdated ideology of segregation and keeping patients in large institutions to more community-based services. The focus should also be directed towards raising public awareness in society on the rights and needs of people with mental health problems in order to overcome stereotypes, fears and prejudice concerning mental disabilities.

2. Preventing torture in prisons through the application of judicial procedural control and due process standards

54. Torture and other ill-treatment in places of detention, specifically in prisons for adults and juveniles, is made more likely by an erroneous belief that due process ends at the moment a person is sentenced and does not include aspects relating to prison conditions and regime after this point. As the incidence of torture is closely related to the legal framework governing places of detention, in addition to responding to complaints and monitoring places of detention, it is critical that States have suitable and comprehensive judicial procedures in place for the oversight and control of prison management relating to both sentenced and remand inmates.

55. In the specific case of prisons, various cultural factors such as ideas that inmates are "outside society" or that they are "dangerous" people and the reactions of the media to public insecurity, contribute to the neglect and vulnerability of persons serving prison sentences or held in pre-trial detention.

56. From a legal perspective, the deficiencies in providing adequate protection for inmates is reflected in the failure to clearly set out the substantive rights that, as a general rule, inmates retain even during the period in which they are incarcerated. It must be made clear from the outset of detention that only some of the rights of detainees are suspended or restricted. In addition, the rights which the prison authorities must provide must be defined and guaranteed.

57. The absence of a legal framework — both organizational and procedural — facilitates and increases the probability of impunity, further human rights violations and the lack of guarantees necessary for the realization of the rights of inmates. These guarantees include the existence of procedural bodies as well as safeguards. It is often said that "the laws are good, but what is lacking is their implementation". However, the problem is not only a practical one but also related to shortcomings in the standards that should ensure the availability of procedural bodies and necessary remedies to realize the rights of detainees. In reality, detainees have "rights without guarantees."

58. The Subcommittee wishes to note that it intends to work on the issue of due process and judicial oversight procedures in places of detention other than those which come under the criminal justice system, e.g. internment for the mentally ill and others.

3. The right to development and the prevention of torture

59. The United Nations Declaration on the Right to Development, adopted by the General Assembly 25 years ago on 4 December 1986, provides that the right to development:⁵

[i]s an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

60. This year marks the 25th anniversary of the right to development. The right is recognized in a number of international instruments, including the United Nations Charter, the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. It is necessarily wide in scope and includes the promotion and protection of fundamental rights and freedoms.

61. In its preamble, the Declaration is mindful of the Charter purpose and principles that “promot[e] and encourag[e] respect for human rights ... without distinction ...”.⁶ It is axiomatic that respect for human rights cannot be promoted or encouraged in a situation where torture or other ill-treatment of persons deprived of their liberty is practised or condoned.

62. The work of the Subcommittee in the prevention of torture forms part of an integrated and balanced interpretation of the right to development. It also plays a pivotal role in helping to raise awareness. It is well established that development is not confined “to purely economic aspirations or goals but articulates a broad, comprehensive understanding ... at national and international levels.”⁷ Democracy, development and human rights are therefore interdependent and mutually reinforcing. The Subcommittee actively engages with the multi-faceted nature of development and human rights in its preventive work with States parties and their NPMs under the Optional Protocol. In fulfilling its mandate, the Subcommittee is guided by the United Nations Charter and its principles, the norms of the United Nations concerning persons deprived of their liberty, and the principles laid out in the Optional Protocol. It not only works effectively with State authorities but also undertakes research on a range of significant detention issues.

63. The efforts of NPMs and the Subcommittee, through the established national and international system of regular visits by both to places of detention, are effectively contributing to the goals of prevention and development through capacity-building, training and education, as well as legislative, administrative, judicial and other measures. Together they support durable systems based on transparency, accountability and the rule of law.

V. Substantive issues

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

⁵ United Nations Declaration on the Right to Development (A/Res/41/128), art. 1.

⁶ Ibid., preambular para. 1.

⁷ Joint Statement of Chairpersons of the UN Treaty Bodies, 1 July 2011.

A. The importance of human rights education in the prevention of torture

65. All States parties to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Optional Protocol) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) have an obligation to prevent torture and ill-treatment whether committed by public officials or by individuals.

66. The Subcommittee on Prevention of Torture is of the view that the obligation to prevent torture should embrace “as many as possible of those things which in a given situation can contribute towards the lessening of the likelihood or risk of torture or ill-treatment occurring”.⁸

67. It is important to emphasize that a preventive approach focuses on the root causes of human rights violations. Below we give a non-exhaustive listing of the root causes of torture and ill-treatment at different levels:

(a) At a macro level the causes include, for example, social tolerance and acceptance of violence as a means of conflict “resolution”; the social legitimization of policies that impose severe sanctions for any form of offence; the lack of political will to eliminate the practice of torture; the construction of hierarchical power relationships in which certain groups of people — for example, those accused of common law or political offences or terrorism, immigrants, women, persons with disabilities, members of ethnic, religious and sexual minorities, the economically disadvantaged, adolescents, children and the elderly — are belittled, devalued, ignored, demonized and dehumanized; and a lack of awareness and ownership of human rights among the population in general;

(b) At an intermediate level the causes include denial by the State of the practice of torture combined with impunity enjoyed by the perpetrators of torture and ill-treatment, who are in many cases actually rewarded by the political and/or economic powers; the failure to report acts of torture and ill-treatment, lack of protection for victims of torture and the absence of redress; a failure to align domestic legal frameworks with the international norms that prohibit torture and provide safeguards for persons deprived of their liberty, coupled, very often, with a failure to apply regulations in those cases where they exist; the inadequate human rights training provided to members of the judiciary, prison personnel, law enforcement officials, health-care professionals, social workers and teachers, etc.; and the links between torture and corruption;

(c) At a micro level, i.e. in individual places of deprivation of liberty in the broadest sense, the causes include the condition of infrastructures and services, which range from run-down to totally inhumane; overcrowding; the precarious employment and living conditions of the staff working in these places; the tendency to use authority arbitrarily; widespread corruption; and a lack of external oversight.

68. The United Nations Declaration on Human Rights Education and Training establishes that human rights education “comprises all educational, training, information, awareness-raising and learning activities aimed at promoting universal respect for and observance of all human rights and fundamental freedoms”.⁹ It also states that “by providing persons with knowledge, skills and understanding and developing their attitudes

⁸ CAT/OP/12/6, para. 3.

⁹ Article 2.1 of the United Nations Declaration on Human Rights Education and Training adopted by the Human Rights Council at its sixteenth session (A/HCR/16/L.1).

and behaviours, to empower them to contribute to the building and promotion of a universal culture of human rights, it contributes to the prevention of human rights violations.”¹⁰

69. Human rights education and training is a key mechanism for the prevention of torture and ill-treatment in that it can help counter the numerous root causes.

70. Including human rights instruction in all levels of education (preschool, primary, secondary and higher) is indispensable for building a culture of respect for human rights from the earliest age and in all areas of everyday life, fostering an environment conducive to the prevention of human rights violations, including torture and ill-treatment, and promoting non-violent methods of conflict management, equality, non-discrimination, inclusion, respect for diversity, solidarity and recognition of the worth of every individual and group.

71. Professional training in the fields of law, health care, psychology, social work, anthropology, public policy, social communication and education, inter alia, requires a type of higher education which incorporates a cross-cutting human rights component as an effective mechanism for preventing human rights violations including torture. University education must be backed up by continuing education, refresher courses and in-service training in human rights.

72. Particular attention should be accorded to the human rights training provided to police, military and prison officers, emphasizing among other aspects their role in protecting human rights, international regulatory frameworks and their practical application in daily operations, and the rights and safeguards enjoyed by persons deprived of their liberty.

73. The training provided to legal professionals involved in the administration of criminal justice (public prosecutors, public defenders, judges and private defence counsels), constitutional judges and to health-care and other professionals who provide forensic expertise is of equal importance.

74. It is very important to strengthen the forums for human rights education that are developing outside the formal educational system, as well as the popular education initiatives that extend their scope to diverse population groups.

75. Human rights education and training must embrace persons who have been deprived of their liberty or whose liberty is restricted and their families.

76. To guarantee the holistic focus of human rights education and training and its consequent role as an increasingly effective tool for preventing human rights violations in general and torture and ill-treatment in particular, we think it vital to take the following guiding principles into account:

- (a) Consistency between study programmes, course content, teaching materials and methods, forms of assessment and the environment in which the teaching/learning process takes place;
- (b) Flexible study programmes which meet the needs of all participants;
- (c) A balance between the physical, mental, spiritual and emotional aspects of the educational process;
- (d) An interdisciplinary, critical and contextualized approach that combines theory and practice and embraces diversity (of gender, ethnicity, age, ability, socio-economic status, sexual orientation, nationality, religion, etc.);

¹⁰ Ibid

(e) A historical approach to human rights, linking these with the various actors involved; and;

(f) Articulated efforts between educational institutions, civil society organizations, State agencies and international mechanisms for the promotion of human rights.

B. The correlation between legal aid, a system of public defence and prevention of torture

77. The right of access to a lawyer from the outset of detention is an important safeguard to prevent torture and other cruel, inhuman and degrading treatment or punishment. This right goes beyond the provision of legal aid solely for the purpose of building up a technical defence. Indeed, the presence of a lawyer at the police station may not only deter the police from inflicting torture or other cruel, inhuman and degrading treatment or punishment, but is also key to assisting in the exercise of rights, including access to complaints mechanisms, for those deprived of their liberty.

78. Effective protection of the right to counsel requires the existence of a legal assistance model, whatever this model might be, to ensure the performance of defence counsels in an independent, free and technically qualified manner. For the realization of the right to counsel there should be a legal framework which allows for public or ex officio defence – whether provided by public officials or by lawyers working pro bono – with functional independence and budgetary autonomy to guarantee free legal assistance for all detainees who require it from the time of their arrest in a timely, effective and comprehensive manner. In addition, the existence of an organizational framework which ensures effective equality of arms between the public defender (be it State, pro bono or mixed), the Public Prosecutor and the police force is essential.

79. Budget and staff constraints directly affect the public defence system as they generate an excessive workload that is not compatible with the effective defence of the interests of persons deprived of their liberty. This was observed repeatedly in the countries visited by the Subcommittee, through numerous interviews both with detainees and officials from various State organizations and civil society, and through information collected and verified during these visits.

80. Defence lawyers should visit their clients in detention periodically to obtain information concerning the status of their cases and to conduct confidential interviews to determine both their detention conditions and their treatment. They must play an active role in the protection of the rights of detainees. The lawyer is a key player – along with judges and prosecutors – in the execution of writs of habeas corpus.

81. Many victims of torture and other cruel, inhuman and degrading treatment or punishment are unwilling to report ill-treatment suffered for fear of reprisals. This can put lawyers in a difficult situation as they cannot commence legal action without the consent of their clients. In this regard, a centralized national database of allegations and incidents of torture and ill-treatment, including anonymous, confidential information obtained under professional confidentiality, is recommended.¹¹ Such a register would be a source of useful information that could point to situations where urgent action is required, and could also assist in the development and adoption of preventive measures. The NPM and other such bodies vested with authority to deal with prevention of and complaints concerning torture

¹¹ See also General Assembly resolution 66/150, para. 8, which encourages States to consider records.

and ill-treatment should also have access to such a national register of allegations and incidents of torture and ill-treatment.

82. The relationship of public defence lawyers to the NPM should be one of complementarity and coordination. Both actors, institutionally relevant in the prevention of torture and ill-treatment, should follow up on the various recommendations, share work programmes and plan their work on common issues, in particular to avoid reprisals after monitoring visits.

VI. Looking forward

A. The new approach to achieving the Subcommittee's mandate

83. As outlined above in chapter IV, section A, following the enlargement of the Subcommittee, members are developing new working methods which will enhance the capacity of the Subcommittee to fulfil its mandate. These include streamlined systems for advising and assisting States in the establishment of, and for engaging with, NPMs; establishing more formal procedures for engaging with dialogue with States arising from visits; developing the Subcommittee's jurisprudence and liaising with other national, regional and international bodies. The Subcommittee recognizes that the working methods recently put in place may need to be further improved in the light of experience, in order to further enhance their effectiveness.

84. While the Subcommittee acknowledges that its enlargement has necessitated change, it has tried to ensure that such change builds on its previous achievements in a positive fashion. It has sought to use this necessity to become more outwardly engaged, dynamic and responsive to preventive need, capitalizing on its increased pool of expertise and experience. At the same time, it also recognizes that diverse opinions and approaches can pose challenges and that a coordinated approach, informed by the institutional practices of the United Nations and OHCHR, is required to fulfil the distinct mandate of the Subcommittee. The Subcommittee is conscious that its work must be of practical use in addressing the needs of diverse systems and do so in a way which properly engages with their specificities.

85. The Subcommittee believes that developing its preventive mandate in the context of the United Nations and OHCHR allows it to benefit from a broad range of expertise and it will continue to seek to exploit this advantage to its full potential. The Subcommittee is acutely conscious of the resource constraints which affect the work of OHCHR and its capacity to make provision for the Subcommittee which is as adequate as it would wish. The Subcommittee will continue to work as closely as it can with OHCHR in the coming year in order to explore how to maximize the value which can be derived from the resources at its disposal, believing that this can best be achieved by enhancing its capacity to exercise operational flexibility within its resource envelope.

B. Plan of work for 2012

86. With the new approach to working with NPMs and follow-up activities, the Subcommittee hopes to make a greater impact in satisfying its mandate efficiently. The new strategy will assist in establishing a systematic range of activities regarding NPMs and opportunities for engagement with them in order to ensure that there is continued and constructive preventive dialogue. This process will also be used to ensure that new States parties are contacted as soon as possible. The Subcommittee is increasingly convinced that

establishing relations with States parties promptly upon their entry into the Optional Protocol system can itself be an effective tool of prevention.

87. The Subcommittee has identified a range of issues which it wishes to explore in its next phase of work. These include substantive issues concerning: torture in the prison context; the relationship between traditional justice of indigenous peoples; the prevention of torture and the detention of migrants. Organizational and procedural issues to explore include: harmonizing means of working with other bodies; determining the means for giving effect to article 16 of the Convention where States fail to cooperate, and the circumstances in which such action will be appropriate; exploring the possibility of building relationships with regional human rights bodies; and developing criteria through which States can access the Special Fund.

88. At the fifteenth session of the Subcommittee in November 2011, it was decided that the Subcommittee will conduct six country visits in 2012. The States parties to be visited are Argentina, Gabon, Honduras, Kyrgyzstan, Republic of Moldova and Senegal. In the case of Honduras, Republic of Moldova and Senegal, the Subcommittee will principally address issues regarding National Preventive Mechanisms (NPMs), as provided for under the Optional Protocol

89. In identifying countries to visit, the Subcommittee continues to engage in a reasoned process, considering various factors, including making optimal use of the enlarged Subcommittee, making the most efficient use of the financial resources available and ensuring appropriate coverage of States parties. In addition, as in the past, the Subcommittee gives careful consideration to the date of ratification, development of NPMs, geographic distribution, size and complexity of the State, preventive monitoring at the regional level and specific/urgent issues reported.
