



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

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Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Forty-second session

Summary record of the first part (public)* of the 1st meeting

Held via videoconference on Monday, 9 November 2020, at 12.30 p.m. Central European Time

Chair: Sir Malcolm Evans

Contents

Opening of the session by a representative of the Secretary-General

Adoption of the agenda and the programme of work

Regional teams

Intersessional activities

* The summary record of the second part (closed) of the meeting appears as document CAT/OP/42/SR.1/Add.1.

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The meeting was called to order at 12.30 p.m.

Opening of the session by a representative of the Secretary-General

1. **The Chair** said that the Subcommittee was pleased to be able to conduct the current session via videoconference and would take the opportunity to hold the opening and closing segments of the session in public. At the outset, he wished to inform members that Ms. Vidali had resigned from the Subcommittee for personal reasons.
2. **Mr. Cissé-Gouro** (Office of the United Nations High Commissioner for Human Rights (OHCHR)) formally declared open the forty-second session of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
3. Congratulating the five members of the Subcommittee who had been re-elected at the Eighth Meeting of the States Parties to the Optional Protocol, on 22 October 2020, he said that their continued presence would help to ensure continuity and institutional memory within the Subcommittee. He also wished to acknowledge the important work of the eight members who would be leaving the Subcommittee at the end of the year. Special tribute was due to Sir Malcolm Evans, who had been a member of the Subcommittee since 2009 and its Chair since 2011. As Chair, Sir Malcolm had played a fundamental role in increasing the visibility of the Subcommittee through dynamic engagement with States parties, other treaty bodies and the United Nations system as a whole. In addition, Sir Malcolm had led numerous visits to States parties, had contributed to the drafting of reports, advice and other Subcommittee documents, and had participated in various OHCHR initiatives, including the elaboration of the *Practical Guide on the Role of National Preventive Mechanisms*. He had also helped to strengthen the human rights treaty body system by striving for consensus among the Chairs of the treaty bodies around innovative ideas in the context of the 2020 treaty body review process.
4. In what had proved to be an extremely challenging year for the treaty body system, the work of the Subcommittee had been hit particularly hard, first by the liquidity crisis affecting the United Nations, then by the restrictions on movement introduced by States in response to the coronavirus disease (COVID-19) pandemic. While recent developments in the global situation had increased the demand for the Subcommittee's work, it had been unable to conduct a single visit in 2020. The Subcommittee had, however, demonstrated a remarkable commitment to pursuing its work online, both during and between sessions, including through its issuance of guidance on compulsory quarantine for coronavirus (CAT/OP/9) and on the wider implications of the COVID-19 pandemic (CAT/OP/10) and through its continued engagement with States parties and national preventive mechanisms. OHCHR would continue to make every effort to support the remote work of the treaty bodies during the pandemic and was committed to addressing the concerns raised in that regard, including in respect of the shortcomings of the digital platforms currently available and the lack of compensation for members taking part in treaty body sessions via videoconference. At the same time, it was clear that, even with improved online platforms, remote work would have its limits. Certain aspects of the Subcommittee's mandate, most notably its visits to places of detention, simply could not be performed remotely. He hoped that the Subcommittee would be able to resume its visiting programme as soon as possible. In the meantime, its continued interaction with States parties, national preventive mechanisms and other international human rights bodies remained of the utmost importance.
5. **The Chair** asked whether the current financial situation of the United Nations could continue to undermine the Subcommittee's activities even when the restrictions introduced by States in response to the COVID-19 pandemic were lifted.
6. **Mr. Cissé-Gouro** (Office of the United Nations High Commissioner for Human Rights) said that the financial outlook was not promising, as Member States continued to delay payment of their dues. He hoped that 2021 would bring positive developments. The Secretary-General had made multiple appeals for those Member States that had not yet done so to pay their assessed contributions to the regular budget in order to keep the United Nations running. When those contributions were eventually received, and if and when the pandemic was contained, the Subcommittee should be able to resume all of its mandated activities.
7. **The Chair** said that the report of the co-facilitators for the 2020 review of the human rights treaty body system, submitted in September 2020, had been the subject of much scrutiny. The co-facilitators' recommendations for a digital shift in the work of the treaty bodies would be difficult to apply in the case of the Subcommittee. In that regard, it would

be interesting to hear more about the possible implications of the 2020 review for the future of the treaty body system and the work of the Subcommittee.

8. **Mr. Cissé-Gouro** (Office of the United Nations High Commissioner for Human Rights) said that the report of the co-facilitators was a good basis on which to take the review of the treaty body system forward. It was now for Member States to take the next steps. While current circumstances required the integration of digital tools into the operations of OHCHR, it was clear that not all of the Subcommittee's activities could be carried out using digital solutions. The priority, as far the Subcommittee was concerned, continued to be the mobilization of sufficient resources so that country visits could resume when the pandemic was contained.

9. **The Chair** said he appreciated the work that OHCHR was doing to ensure that the interests of the Subcommittee were fully reflected in the outcome of the 2020 review process. The Subcommittee would continue to demonstrate flexibility and innovation in its efforts to find new ways to maximize the impact of its mandate, through the means at its disposal. Nonetheless, it was imperative for physical visits to be resumed as soon as possible.

Adoption of the agenda and the programme of work

10. **The Chair** drew attention to the provisional agenda (CAT/OP/42/R.1) and the draft programme of work, which had been circulated informally. He noted that, during the forty-first session, the Subcommittee's two thematic working groups, which usually met informally in separate, parallel meetings, had been unable to convene. At the current session, they would convene in a meeting of the plenary Subcommittee, as working groups of the whole, thus benefiting from interpretation services. With that explanation, he took it that the Subcommittee wished to adopt the provisional agenda and the draft programme of work, subject to such variations as might be necessary during the session.

11. *It was so decided.*

Regional teams

12. **The Chair** invited the heads of the Subcommittee's regional teams to give a brief summary of the latest developments in their respective regions.

Regional team on Africa

13. **Mr. Kodjo**, speaking as head of the regional team, said that the team had continued to provide advice to States parties and national preventive mechanisms during the COVID-19 pandemic. He was pleased to report that the Niger had established its national preventive mechanism; members of the team would hold a virtual meeting with the members of the mechanism at the current session. Furthermore, South Africa was in the process of establishing its national preventive mechanism; the team planned to meet virtually with representatives of the South African human rights institution later in the session to provide guidance in that regard. The Subcommittee's reports on its visits to Ghana and Senegal had been finalized and transmitted. The team encouraged all States parties visited by the Subcommittee, and their national preventive mechanisms, to publish the Subcommittee's visit reports in order to facilitate dialogue and promote transparency and to qualify for support from the Special Fund established pursuant to article 26 of the Optional Protocol. It also encouraged States parties and national preventive mechanisms to request technical assistance if they required it.

Regional team on the Americas

14. **Ms. Gómez**, speaking on behalf of Mr. Fehér Pérez, head of the regional team, said that the team had gathered information from a number of States parties and national preventive mechanisms in the region with regard to the measures they had taken in response to the COVID-19 pandemic. The pandemic had thrown into sharp relief the problems that the Subcommittee had been highlighting for many years in its reports, namely a general deterioration of the conditions in places of deprivation of liberty in Latin America, serious overcrowding, a lack of medical assistance and water, inadequate food, and a failure to meet detainees' basic needs. In most countries in the region, visits to places of deprivation of liberty had been prohibited in an attempt to mitigate the spread of the coronavirus, but that measure, taken alone, had not been effective and the propagation of the virus in prisons was

reported to be widespread. Moreover, in some places the prohibition of visits had led to riots, since inmates often relied on family members to bring food and medicines into prisons. While in some countries there had been efforts to rectify the excessive application of pretrial detention by granting pardons and amnesties, no data had been provided on the impact of such efforts, and the information available was obfuscated by the fact that some States parties classified conditional release, a measure normally available to all detainees, as a preventive measure. Some best practices that should be highlighted, however, were the use of teleconferencing services and the provision of mobile telephones to allow detainees to contact their families; remote monitoring of places of deprivation of liberty by national preventive mechanisms, including the checking of registers and virtual meetings with prison authorities; the availability of dedicated telephone lines through which detainees could file complaints and reports; and the fact that those visits that were allowed to take place complied with disease control requirements such as physical distancing.

Regional team on Asia and the Pacific

15. **Ms. Lopez**, speaking as head of the regional team, said that the team welcomed the closure of the offshore immigrant detention facilities in Nauru, which the Subcommittee had visited in 2015 and strongly criticized. It was concerned, however, that Nauru had not yet established a national preventive mechanism and that some 200 persons formerly held in the facilities remained on the island and were not free to leave. The team was hopeful that the challenges facing Nauru and the other States parties from the region still to establish a mechanism, namely Mongolia and the Philippines, could be overcome through continued dialogue and the involvement of State party and civil society stakeholders.

16. The regional team remained vigilant with respect to the adequate implementation of the visiting mandates of existing national preventive mechanisms during the COVID-19 pandemic. In that regard, it welcomed the efforts of the national preventive mechanisms of Kyrgyzstan, Maldives and New Zealand to resume their normal functioning. Most mechanisms in the region faced increasing pandemic-related restrictions and prohibitions and a lack of access to places of detention and detainees. The regional team wished to reiterate that quarantines, whether compulsory or not, were a form of deprivation of liberty that should be monitored, in both public and private settings. The States parties of the region should facilitate the removal of temporary restrictions of even very short duration on access by mechanisms to places of detention.

17. Another challenge facing national preventive mechanisms in the region was the declining support for their operations, at a time when it was more important than ever for the mechanisms to be provided with independent, competent human resources and a sufficient budget to ensure their autonomous and adequate functioning. States parties must also fulfil their obligation under the Optional Protocol to protect the work of the mechanisms against reprisals and engage in transparent dialogue with them, for that was the key to the mechanisms' ability to contribute to policies regarding the prevention of torture.

18. The regional team was profoundly disappointed at the postponement of the planned 2020 visits to Australia and Nauru. It hoped they would be given priority when the financial crisis abated.

Regional team on Europe

19. **Mr. Fink**, speaking as head of the regional team, said that the measures being taken by European countries in response to the second wave of the pandemic differed from those taken during the first wave in that borders were not closed, there were some possibilities for travel and prisons were not totally locked down. However, detained persons still faced supplementary restrictions in many countries, including reduced or no family visits, or the replacement of visits with videoconferences; 7- or 14-day quarantines for new inmates; and restrictions on purposeful activities, namely work, education, leisure and sport. As only a few facilities had generous open-door policies, many detainees had to spend long days in tiny cells. National preventive mechanisms had resumed monitoring of places of deprivation of liberty in June and would probably undertake more remote monitoring going forward.

20. On a positive note, Iceland had ratified the Optional Protocol in February 2019 and established a national preventive mechanism, which was in contact with the Subcommittee and had begun its monitoring activities. Belgium would soon ratify the Optional Protocol and

either create or designate a national preventive mechanism. The Subcommittee had been represented at the meeting held by the Belgian Ministry of Foreign Affairs on the requirements for the mechanism. Following the Subcommittee's September 2019 visit and the transmission of its report to the State party, the Government of the United Kingdom was looking into providing its national preventive mechanism with the legal basis it had thus far lacked.

21. There had been certain worrying developments in the region in terms of the visiting mandates of some national preventive mechanisms and their access to detainees in prisons; the regional team would follow up on them and raise them with the relevant permanent missions in Geneva.

22. The team was still considering how to implement the agreement between the Subcommittee and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on the strategic planning and conduct of visits in the region. Team members had actively contributed to the work of specific bodies within the United Nations system, such as the treaty bodies' working group on COVID-19, and to webinars and other exchanges with non-governmental organizations and universities. The team would continue its collaboration with the European NPM Project.

23. **The Chair** said that, during their meetings, the regional teams would consider the specific steps that the Subcommittee could take to address the issues raised.

Intersessional activities

24. **The Chair** invited Ms. Sveaass to report on the activities of the working group established by the treaty body Chairs to discuss the response to the COVID-19 pandemic.

25. **Ms. Sveaass** said that the working group consisted of representatives, including herself and Ms. Langfeldt, of the 10 treaty bodies. Its task was to determine which elements of the treaty bodies' mandates could be fulfilled given the pandemic-related restrictions on movement. The report prepared by the group, meeting via teleconference, had been presented at the annual meeting of the Chairs, in July 2020.

26. At the time of the working group's early meetings, the Subcommittee had been the only body to have held an online session. Other treaty bodies had since held such sessions, working on general comments, individual complaints and lists of issues prior to reporting. There had been agreement, however, that it would be extremely difficult to conduct State party reviews online. Hearing other treaty bodies report that they had had some contact with civil society had highlighted the Subcommittee's privileged position in terms of its extensive contacts with national preventive mechanisms and civil society organizations in countries that had ratified the Optional Protocol.

27. **The Chair** said that what had started as an unformed idea at a Chairs' meeting had grown into a major pillar of the current work of the treaty body system as a whole.

The public part of the meeting rose at 1.35 p.m.