



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

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**Committee against Torture  
Subcommittee on Prevention of Torture and Other Cruel,  
Inhuman or Degrading Treatment or Punishment  
Fifteenth session**

**Summary record of the first public part\* of the 6th meeting**

Held at the Palais des Nations, Geneva, on Wednesday, 16 November 2011, at 4.10 p.m.

*Chairperson:* Mr. Evans

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\* The summary record of the closed part of the meeting appears as document CAT/OP/15/SR.6.

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*The public part of the meeting was called to order at 4.10 p.m.*

**Meeting with the Committee against Torture** (*continued*)

1. *At the invitation of the Chairperson, the members of the Committee against Torture took places at the Subcommittee table.*
2. **The Chairperson** welcomed the members of the Committee against Torture and recalled that the meeting would cover the following issues: the concept of prevention of torture; the strategic focus of the Subcommittee for 2012; the methodology for sharing information between the two bodies; the provisions of the Optional Protocol concerning both bodies; and article 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which would be discussed in the closed part of the meeting. He invited Mr. Sarre Iguíniz to present the first topic for discussion.
3. **Mr. Sarre Iguíniz** said that, in 2010, following the issuance of the general comment of the Committee against Torture on the implementation of article 2 of the Convention (CAT/C/GC/2), the Subcommittee had drafted a document (CAT/OP/12/6) that described its approach to the concept of prevention of torture under the Optional Protocol and set out the principles that should guide its preventive endeavours. The particularities of the Subcommittee's work were that its mission required it to cooperate with States parties rather than to investigate allegations of torture and that regular visits to places of detention were the cornerstone of its activities. Its relationship with national preventive mechanisms was also key, as those mechanisms had a central role in preventing torture on a day-to-day basis. The Subcommittee had adopted an all-encompassing approach to situations of deprivation of liberty, from arrest through to final release, and accorded importance not only to procedural safeguards but also to practical measures that were effective in preventing torture and ill-treatment. Despite those specificities, there was no denying that the mandates of the Committee and the Subcommittee had many common elements where torture prevention was concerned.
4. **Mr. Grossman** (Chairperson of the Committee against Torture) said that he welcomed the further meeting with the Subcommittee and was pleased that it wished to extend its activities following the enlargement of its membership. From a practical point of view, it would be good if sessions of the two bodies could take place in the same building in order to facilitate informal contact and enhance communication between members. The Committee and the Subcommittee were in fact pursuing the same goal, namely the elimination of torture. The Committee's Views issued under article 22 had a preventive effect, as did the measures adopted by States parties in implementation of article 19. Prevention was a wide-ranging issue that could be addressed from a variety of angles. For that reason, it was essential to avoid artificial distinctions and instead to foster communication and exchanges between all concerned actors, including the Special Rapporteur on torture.
5. **The Chairperson** said that he fully supported that view and that it was important to seize every opportunity to highlight the complementary nature of the work of the Subcommittee, the Committee and the Special Rapporteur, as the Chairpersons of the two bodies and the Special Rapporteur had had the chance to do before the Third Committee of the General Assembly and at other joint meetings in New York in October 2011.
6. **Mr. Mariño Menéndez** (Committee against Torture) said that prevention was at the heart of the obligations assumed by States parties to the Convention against Torture, whether the general obligations set out in article 2 or the more specific obligations to adopt certain measures and achieve certain results established elsewhere in the Convention. The obligation to establish appropriate inquiry bodies and prevention mechanisms, for example, was an obligation of result. Working methods and the diligence with which States parties

endeavoured to prevent acts of torture, by contrast, were the subject of best-endeavours obligations that might vary depending on whether the State party was in a conflict situation or at peace and whether the persons involved were part of the general population or a vulnerable group. It was against those considerations that the Subcommittee and the Committee evaluated States parties' performance, the institutions they established and the results they achieved. There was a degree of convergence between the recommendations formulated by the Subcommittee and the Committee's assessment of a State party's compliance with treaty obligations that was conducive to information sharing.

7. **Mr. Rodríguez Rescia** said that the value of the Subcommittee lay primarily in its work on the ground and in the methodologies and guidelines it had developed for that purpose, drawing on the work and jurisprudence of the Committee. Those methodologies included a strategy for identifying risks and deficiencies in the area of torture prevention, whether linked to legislative lacunae, the failure to apply the recommendations of the Committee and other treaty bodies, non-compliance with the standards of international law or bad practice. When visiting States parties, the Subcommittee looked at the legislative and regulatory framework, police practice, the public defence system, places of detention, the fairness of the judicial system and the treatment of vulnerable groups, beginning with general issues and then progressing to more specific problems. The experience accumulated over the past five years had enabled it to define an operational doctrine for prevention. The aim now was to develop that doctrine and disseminate it among States parties, other treaty bodies and all concerned actors.

8. **Ms. Goddard**, noting that the conduct of inquiries was among the functions attributed to the Committee against Torture, asked how many inquiries were under way at that time and what those inquiries entailed. She would also be interested in any other information available on that subject.

9. **Ms. Gaer** (Committee against Torture) said that, as methods of prevention were continually evolving, the observations made by the Subcommittee in that area, particularly during field visits to national preventive mechanisms, might be very valuable to the Committee, which was constantly striving to recommend more effective prevention methods to States parties. She wondered whether the Subcommittee might share with the Committee any new methods of which it was aware and that had proved effective. Cooperation between the two bodies would also be useful, from a methodological and a practical point of view, in the event that the Subcommittee made a negative assessment of a State party's compliance with the requirement to establish a national preventive mechanism. In such situations, the Subcommittee could ask the Committee to take the measures envisaged in article 16, paragraph 4, of the Optional Protocol, while the Committee could, if necessary, apply the provisions of article 24, paragraph 2, which allowed the postponement of implementation of the obligation to establish a mechanism to be extended for an additional two years.

10. **The Chairperson** explained that, according to the Optional Protocol and recent clarifications made to address certain ambiguities in the text of article 24, States parties that wished to make a declaration indicating that they were postponing implementation of their obligations under the Protocol must do so on ratification. Unless he was mistaken, to date only three such declarations had been made and no State party had made a request for postponement after ratification. If that situation did arise, it would be for the State party concerned to submit the request and for the Subcommittee to find practical ways to consider the case in conjunction with the Committee. On the more general question of information and experience sharing, in the document concerning its approach to the concept of prevention of torture, the Subcommittee had arrived at the same conclusions as the Committee, which had indicated that its understanding of and recommendations in respect of effective measures were in a process of continual evolution and were not limited to those

measures contained in the text of the Convention. Believing that it was not possible to devise a comprehensive statement of what the obligation to prevent torture entailed *in abstracto*, the Subcommittee had concluded that it was necessary to root the concept in practice – hence the value of discussing the different prevention methods with the Committee with a view to establishing whether or not they fell within the scope of the relevant legal obligations. That conclusion tied in with Mr. Mariño Menéndez’s observations, in the sense that prevention methods that the Subcommittee might consider to be effective, and therefore recommend, might not be limited, in terms of their effect, to those acts that States parties were under a legal obligation to prevent but might also embrace many other measures that could hardly be declared legally mandatory at the current stage but might become so at a later date. Accordingly, just as the Committee had noted that the set of core obligations was likely to be enlarged, the Subcommittee was fully aware that it should formulate recommendations that took account of that likelihood and that, in disseminating those recommendations, it should contribute to broadening the notion of obligation.

11. **Mr. Grossman** (Chairperson of the Committee against Torture) said that more than 30 States parties had not yet submitted their initial report under the Convention against Torture and that, in the case of a good number of those States, the initial report was overdue by more than 10 years. While it was encouraging to note that States had established mechanisms enabling nationals to file complaints against them, it must also be acknowledged that those mechanisms were far from perfect and that there was a long way to go before practice matched theory. With regard to communication between the Committee and the Subcommittee, it would be good to establish certain institutional arrangements. Thus, the two bodies could push to have their sessions held in the same building and one or more members of each body could participate as observers in the meetings of the other body. In addition, the possibility of establishing a cooperation group, perhaps with a focus on specific themes, could be put back on the agenda. Although, in accordance with article 20 of the Convention against Torture, some of the work carried out by the Committee was confidential, it was desirable, and even logical, that there should be no confidentiality restrictions between two such closely related bodies. That issue should be addressed, perhaps by a standing committee that could carry out specific projects.

12. **Mr. Bruni** (Committee against Torture) asked whether the Subcommittee could invoke article 16, paragraph 4, of the Optional Protocol in the event that a State party that had not made the declaration of postponement provided for in article 24, paragraph 1, of the Optional Protocol failed to establish its national preventive mechanism within the required period.

13. **The Chairperson** said that such a situation had not arisen. That course of action would not in any case be possible because article 16, which was included in Part III of the Optional Protocol, related to visits of the Subcommittee and not to national preventive mechanisms, which were covered in Part IV. That separation was due to the confidential nature of visits and of the information they enabled the Subcommittee to amass. It was inherent to the structure of the Optional Protocol and indissociable from Subcommittee members’ right to make visits to States parties. The Subcommittee could, however, use other methods to communicate its position to States parties that did not fulfil their obligation to establish national preventive mechanisms by the required deadline. It could, for example, post a list of the States in question on its website, which was publicly accessible.

14. **Mr. Hajek**, while welcoming the increase in the number of States parties and the Subcommittee’s consequent enlargement to 25 members, said that it was difficult to envisage a situation where each State party could be visited more than once every twenty years, even though such visits were at the heart of the Subcommittee’s mandate. However,

the Subcommittee continued to make every effort to maximize the value of its visits, as well as the utility of other trips that its members made to the different countries. Members already frequently used their visits to States parties as an opportunity to meet with representatives of the national preventive mechanisms and explore ways to improve the impact of the mechanisms' activities and communication between them and the Subcommittee, and a marked increase in that kind of activity was envisaged. By the end of the strategic planning exercise currently under way, the Subcommittee would have prepared a list of the States parties that its members would be visiting. Not all States parties would receive a full visit. Some visits would be follow-up visits, others would be centred on discussions with national preventive mechanisms while others would be high-level meetings. The Subcommittee would nevertheless continue to seek ways to visit a greater number of States parties, perhaps drawing on external support for that purpose, as it was extremely important to maintain working partnerships with States and their national preventive mechanisms.

15. **The Chairperson** said that the Subcommittee was striving to be more flexible and innovative in the execution of its mandate so that it could extend the scope of its actions. He would be interested to hear Committee members' views on that subject.

16. **Mr. Grossman** (Chairperson of the Committee against Torture) said that both the Committee and the Subcommittee were monitoring bodies. However, the theory that monitoring was simply a question of measuring performance against standards was incorrect because the terms of reference that treaties established related to a changing reality; standards too changed as a result, meaning that monitoring called for creativity. The adaptability demonstrated by a given body was a measure of its dynamism. The methods that the Committee and the Subcommittee employed must change apace with the global reality, which was evolving increasingly rapidly.

17. **Mr. Coriolano** said that a number of regular mechanisms had been put in place since the establishment of the two bodies' joint Working Group in November 2007. For example, the country briefs prepared by the Subcommittee's secretariat were shared with the Committee against Torture, heads of mission met with the Committee's Rapporteur for the country in question and confidential information was exchanged. Even so, an annual meeting of the Committee and the Subcommittee was not sufficient and it would be good to establish other channels of communication. It was also important to highlight that the Working Group had received support from civil society organizations, including the Association for the Prevention of Torture (APT), that had allowed it to meet outside regular sessions in order to advance certain issues. He would be in favour of cooperation with regional organizations and increased intersessional work, possibly under the supervision of a vice-chairperson with responsibility for that area. An intersessional working group with formally established rules of procedure could be constituted for that purpose. The Special Rapporteur on torture could also be asked to participate in the annual meeting of the Committee and Subcommittee so that the three components of the torture prevention mechanism could draw up a coordinated programme of work. Lastly, a contact group for the annual meeting could be created and civil society organizations, whose contribution would be invaluable, could be invited to attend.

18. **The Chairperson** said that it would be useful for the two bodies to have their meetings in the same building and for one or more members of each to attend meetings of the other as observers. It would also be interesting and symbolically significant for Subcommittee members who had visited a certain State party to participate in meetings of the Committee that were to focus on that same country. The establishment of a standing cooperation group was also an excellent idea.

19. **Mr. Grossman** (Chairperson of the Committee against Torture) noted, with regard to the possibility of cross-participation in meetings of the two bodies, that it was important

to take account of the fact that the Committee had three types of meeting: public meetings, private meetings and closed meetings. However, although the Subcommittee adhered to the principle of confidentiality, it was questionable whether that should necessarily imply the exclusion of other bodies.

*The public part of the meeting rose at 5.25 p.m.*