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Preventing Torture Worldwide - The Optional Protocol to the Convention against Torture

Introduction

On 18 December 2002, the United Nations (UN) General Assembly adopted a new mechanism aimed at preventing torture: the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Protocol).

The Protocol allows independent international experts to conduct regular visits to places of detention within states parties (i.e. states that have accepted this Protocol by ratifying or acceding to it). The aim of these visits is to assess the condition of detention and the treatment of those detained and to make recommendations to states parties for improvements. The Protocol also requires states parties to set up national mechanism to conduct visits to places of detention and to cooperate with the international experts.

Amnesty International together with many other non-governmental organisations (NGOs) have long campaigned for a strong and effective Protocol, and welcomed its adoption by the UN. By focussing on preventive rather than retroactive measures, and by establishing a complementary relationship between international and national mechanisms of monitoring, the Protocol offers a new and important tool to eradicate torture. The Protocol received overwhelming support at the UN General Assembly.¹ Now governments must follow up on that expression of support by signing and ratifying the Protocol, and by doing so ensuring its prompt entry into force.

This document summarises the main provisions of the Protocol and gives a brief overview of the international monitoring mechanism that it establishes. Its aim is to raise awareness of the Protocol and to encourage states to sign and ratify it as a matter of priority. A separate document on the national monitoring mechanism will be produced in the coming months.

Historical background

The Protocol is the result of long, and often difficult, negotiations. The first draft was tabled at the UN Commission on Human Rights (the Commission) by Costa Rica in 1991.² The Commission established an open ended inter-sessional working group mandated to elaborate a

¹ UN Doc A/RES/57/199. The vote was 127 in favour, 4 against, 42 abstentions, please see Annex iii for details on the vote.

² For more information on the history of the Protocol, see Amnesty International, *The Draft Optional Protocol to the Convention against Torture – Developing an Effective Tool to Prevent Torture* (AI Index: IOR 51/01/96) and *Optional Protocol to the Convention against Torture – Time to take a stand on the prevention of torture* (AI Index: IOR 51/006/2001).

draft Protocol. The working group was opened to all states, both members and non-members of the Commission, as well as to inter-governmental organizations and NGOs. Amnesty International, together with other international NGOs, participated in the Working Group and campaigned for a strong and effective Protocol.³

The idea of a draft protocol was supported by Amnesty International and many national and international NGOs; its importance was also stressed by various Special Rapporteurs on torture⁴. Recognizing the importance of the protocol, the 1993 World Conference on Human Rights stated:

A[E]fforts to eradicate torture should, first and foremost, be concentrated on prevention and, therefore, call[ed] for the early adoption of an optional protocol to the Convention against Torture [...], which is intended to establish a preventive system of regular visits to places of detention@. ⁵

Despite this strong support, negotiations were often very difficult and on occasions it seemed that the whole process might collapse. It took the open ended working group 10 years to negotiate a text. Among the contentious issues were: concerns about issuing standing invitations, so that experts have the right to enter a country for inspections at any time without limitations; concerns that experts would abuse powers to visit all areas in places of detention; concerns that experts would make politically motivated condemnatory statements.

What is the Optional Protocol?

The Convention against Torture is an international treaty which bans torture and cruel, inhuman or degrading treatment or punishment. It sets the standards for methods by which states are to implement that ban at the national and international levels such as by carrying out investigations and bringing perpetrators to justice.

The Protocol to the Convention against Torture was developed to establish an international and national mechanism to prevent torture by undertaking visits to assess conditions and practices in places of detention such as police stations and prisons - those places where torture and ill-treatment frequently take place. Prevention of torture is already an existing obligation in the Convention against Torture, and states are required to take steps to prevent torture pursuant to articles 2, 11 and 16 of the Convention against Torture.⁶

³ See *supra* footnote 2.

⁴ See Report of the Special Rapporteur on torture, Mr. P.Kooijmans; UN Doc E/CN.4/1988/17; 12 January 1988 and Report of the Special Rapporteur on torture, N. Rodley; UN Doc E/CN.4/1995/34;12 January 1995.

⁵ UN Doc A/CONF.157/23, of 12 July 1993, paragraph 61.

⁶ Article 2(1) of the Convention against Torture states “ Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.” Article 11 states: “Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons

As stated in article 1 of the Protocol, its objective is "to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment".

The Protocol provides a radically different type of international mechanism from those already existing within the UN system, such as the Special Rapporteur on Torture, the Committee against Torture, the Human Rights Committee - as it seeks to prevent torture, rather than respond to incidences of torture after they have been committed. While other UN mechanisms have, in exercising their mandates, made recommendations to states on prevention of torture on the basis of written reports and constructive dialogue with high level state authorities, they cannot make regular visits into a country to assess the conditions of places of detention and the activities of those who are directly responsible for detaining prisoners, suspects, at their place of work. In this regard, as the former Special Rapporteur on torture, Mr Kooijmans, pointed out, the Protocol "would to a certain extent be the final stone in the edifice which the United Nations has built in their campaign against torture".⁷

Another innovation of the Protocol is that it provides for an international mechanism, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Subcommittee on Prevention"), which will work alongside one or several visiting bodies for the prevention of torture ("National Preventive Mechanism"). This report will focus particularly on the Subcommittee on Prevention. Amnesty International is planning a separate report on the national preventive mechanisms in the coming months.⁸

The Subcommittee on Prevention

The Subcommittee on Prevention constitutes the international mechanism of prevention of torture set up by the Protocol.

subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture." Article 16 states: "Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

⁷ Report of the Special Rapporteur on torture, Mr. P.Kooijmans; UN Doc E/CN.4/1988/17; 12 January 1988, page 21, paragraph 65.

⁸ For the basic requirements that such mechanisms should fulfil, see Amnesty International, *National Human Rights Institutions - Amnesty International's recommendations for effective protection and promotion of human rights* (AI Index: IOR 40/007/2001).

It is composed of 10 independent experts⁹ elected by states parties of the Protocol for a term of 4 years (renewable only once). The experts shall be "persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty" (Article 5.2).

The mandate of the Subcommittee is laid out in article 11 of the Protocol:

A(a) Visit the places [of detention] and make recommendations to States Parties concerning the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment;

(b) In regard to the national preventive mechanisms:

(i) Advise and assist States Parties, when necessary, in their establishment;

(ii) Maintain direct, if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;

(iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment;

(iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

(c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working toward the strengthening of the protection of persons from torture and other cruel, inhuman or degrading treatment or punishment. @

To facilitate the carrying out of its mandate, states parties are under the obligation to:

“(a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention [...];

(b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;

⁹ The number of members shall increase to 25 after the fiftieth ratification of or accession to the Protocol (Article 5.1).

(d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.” (Article 12)

Visits to places of detention

As mentioned above, the main aim of the Protocol is to "establish a system of regular visits" (Article 1). States parties to the Protocol have an obligation to allow the Subcommittee on Prevention to visit "any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence" (Article 4.1).

A definition of deprivation of liberty is contained in Article 4.2 as "any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will by order of any judicial, administrative or other authority".

The Subcommittee on Prevention may therefore visits prisons and police stations, detention centres, psychiatric institutions (where persons have been hospitalized on involuntary basis), detention areas in military bases, detention centres for asylum seekers and immigration centres, centres for juveniles, places of administrative detention.

The model of preventing torture through visits to places of detention has been adopted by the European Committee for the Prevention of Torture (CPT), established by the European Convention on the Prevention of Torture.

The CPT experience has shown that independent visiting mechanisms can prevent torture by examining the conditions and procedures of detentions and making recommendations for their immediate improvements and by establishing a continuing dialogue with the authorities on the implementation of its recommendations. Furthermore, regular visits can have a deterrent effect on detention personnel and authorities.¹⁰

While it will be up to the Subcommittee on Prevention, once established, to define the modalities of such visits in their rules of procedure and working methods, the Protocol contains some provisions on how the visits will be carried out.

Periodic and ad hoc visits

According to Article 13 of the Protocol, the Subcommittee shall establish a programme of regular visits to states parties. At first, they will choose which countries to visit by lot. Further, subsequent periodic visits and follow-up visits may be carried out.¹¹

The experience of ad hoc visits established by the CPT may provide a useful tool in reacting to situations where the Subcommittee has serious concerns in a particular country. Amnesty

¹⁰ For more information on the CPT activities, see website: <http://www.cpt.coe.int/en/>

¹¹ The Protocol provides that the Subcommittee may Apropose a short follow-up visit after regular visit@ (Article 13.4).

International believes that although ad hoc visits are not expressly provided for in the Protocol, the Subcommittee may develop the criteria and modalities of such ad hoc visits when adopting its rules of procedure.

Modalities of the visits

The Subcommittee shall establish a program of regular visits. The visits shall be conducted by at least two members of the Subcommittee (Article 13.3) and they may be accompanied by experts in the field covered by the Protocol.

Such experts will be selected from a roster prepared by the Office of the High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention.

Consent to visits by the Subcommittee on Prevention

When a state ratifies or accedes to the Protocol, it becomes obliged to accept visits from the Subcommittee on Prevention and to grant access to all places of detention. No further permission for a visit needs to be sought by the Subcommittee.

Carrying out a visit

The Subcommittee will have unrestricted access to all information concerning the number of persons deprived of their liberty and the number of places of detention and their location, as well as to information on the treatment of these persons and their conditions of detention

The Subcommittee will have total discretion to choose which places it wants to visit. The state will only be able to object to a visit of a particular place of detention on the basis of urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited which temporarily prevent the carrying out of such a visit (Article 14.2).

The Subcommittee may choose who they want to interview and may conduct interviews in private without witnesses (Article 14.1(d)).

To protect those providing information to the Subcommittee, the Protocol expressly states that no authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated with the Subcommittee (Article 15).

Recommendations

In line with the principle of confidentiality that informs this Protocol, the recommendations of the Subcommittee will be communicated confidentially to the state party concerned and, when relevant, to the national mechanism.

The report of the visit will not be published, unless so requested by the state party. However, if the state party makes part of the report public, the Subcommittee will have the discretion to

publish the whole report, to provide the public with the full picture of its findings and recommendations.

The state party will be under an obligation to examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

On implementation, the national mechanism may play a crucial role in monitoring the implementation of the recommendations of the Subcommittee.

If the state party refuses to cooperate with the Subcommittee or to take steps to implement its recommendations, the Committee against Torture may, on request of the Subcommittee, decide to make a public statement on the matter or to publish the Subcommittee's report (Article 16.4)

National preventive mechanism

As mentioned above, one of the key features of the Protocol is that it sets up both international and national mechanisms to monitor places of detention. Under the Protocol, states parties are obliged to set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture (Article 3).

According to the Protocol, national preventive mechanism shall at minimum:

- a regularly examine the treatment of persons deprived of their liberties;
- b make recommendations to the relevant authorities to improve conditions of persons deprived of their liberties;
- c submit proposals or observations concerning existing or draft legislation in this matter.

It is worth noticing that the Protocol includes various provisions spelling out how the national preventive mechanisms will interact with the Subcommittee on Prevention. Firstly the Subcommittee is expressly mandated to provide assistance to states parties in establishing their national preventive mechanisms. The Subcommittee shall also establish contact with national preventive mechanisms, including by transmitting to them the reports of their regular visits. Finally states parties have an obligation to encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanism.

In the view of the above consideration, Amnesty International believes that the relationship between the Subcommittee and the national mechanisms may play a crucial role in ensuring that the recommendations made at international level are implemented by states parties. In this regard Amnesty International plans to produce a further report with recommendations to governments on ways to set up these national preventive mechanisms.¹²

¹² Amnesty International, *National Human Rights Institutions - Amnesty International's recommendations for effective protection and promotion of human rights* (AI Index: IOR 40/007/2001).

Conclusions and recommendations

The Protocol will apply only to those states parties of the Convention against Torture which ratifies or accedes to the Protocol itself. As of 13 May 2003, Argentina, Costa Rica and Senegal are the only states to have signed the Protocol; no states have ratified it.¹³ The Protocol requires 20 ratification to enter into force.

At the last General Assembly, the Protocol received cross-regional support from a majority of states.¹⁴

Amnesty International urges all states parties to the Convention against Torture to ratify the Protocol. Amnesty International also urges all states that have not yet done so to ratify the Convention against Torture and the Protocol without reservations.

Bearing in mind that the process of ratification of an international treaty may require a complex and long legislative process (including amendment or adoption of national legislation), Amnesty International urges all states to show their support of the Protocol by signing it on 26 June 2003, International Day for Victims of Torture, and begin immediately the process of ratification at national level.

¹³ See Annex ii for status of signature and ratification.

¹⁴ See Annex iii for voting record at the General Assembly.

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

Preamble

The States Parties to the present Protocol,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights,

Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures,

Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention,

Have agreed as follows:

Part I

General principles

Article 1

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Article 2

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.
2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.
3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.
4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

Article 3

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

Article 4

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.
2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

Part II

Subcommittee on Prevention

Article 5

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.
2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.
3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.
4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.
5. No two members of the Subcommittee on Prevention may be nationals of the same State.
6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

Article 6

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.
2. (a) The nominees shall have the nationality of a State Party to the present Protocol;
(b) At least one of the two candidates shall have the nationality of the nominating State Party;
(c) No more than two nationals of a State Party shall be nominated;
(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.
3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

Article 7

1. The members of the Subcommittee on Prevention shall be elected in the following manner:
(a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;

(b) The initial election shall be held no later than six months after the entry into force of the present Protocol;

(c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;

(d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:

(a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;

(b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;

(c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

Article 8

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 (d).

Article 10

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.

2. The Subcommittee on Prevention shall establish its own rules of procedure.

These rules shall provide, inter alia, that:

(a) Half the members plus one shall constitute a quorum;

(b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;

(c) The Subcommittee on Prevention shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure.

The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

Part III

Mandate of the Subcommittee on Prevention

Article 11

The Subcommittee on Prevention shall:

(a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(b) In regard to the national preventive mechanisms:

(i) Advise and assist States Parties, when necessary, in their establishment;

(ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;

(iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

(c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or

organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

Article 12

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake:

- (a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;
- (b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
- (c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;
- (d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

Article 13

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.
2. After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.
3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.
4. If the Subcommittee on Prevention considers it appropriate, it may propose a short follow-up visit after a regular visit.

Article 14

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:

(a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;

(e) The liberty to choose the places it wants to visit and the persons it wants to interview.

2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

Article 15

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

Article 16

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.

2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.

3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.

4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the

State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

Part IV

National preventive mechanisms

Article 17

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

Article 18

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.
2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.
3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.
4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

Article 19

The national preventive mechanisms shall be granted at a minimum the power:

- (a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- (b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
- (c) To submit proposals and observations concerning existing or draft legislation.

Article 20

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

- (a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
- (b) Access to all information referring to the treatment of those persons as well as their conditions of detention;
- (c) Access to all places of detention and their installations and facilities;
- (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;
- (e) The liberty to choose the places they want to visit and the persons they want to interview;
- (f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Article 21

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.
2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

Article 22

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Article 23

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

Part V Declaration

Article 24

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.

2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

Part VI

Financial provisions

Article 25

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.
2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

Article 26

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.
2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

Part VII

Final provisions

Article 27

1. The present Protocol is open for signature by any State that has signed the Convention.
2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 28

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

Article 29

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 30

No reservations shall be made to the present Protocol.

Article 31

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

Article 32

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 33

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention.

Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.

3. Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

Article 34

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

Article 35

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 36

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

(a) Respect the laws and regulations of the visited State;

(b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 37

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

Annex II: Status of ratification of the Protocol, as of 13 May 2003

State	Signature	Ratification
Argentina	30 April 2003	
Costa Rica	4 February 2003	
Senegal	4 February 2003	

Annex III: UN General Assembly vote on the Optional Protocol

In favour:

Albania, Andorra, Angola, Antigua and Barbuda, Argentina, Armenia, Austria, Azerbaijan, Bahrain, Barbados, Belarus, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Canada, Cape Verde, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Haiti, Honduras, Hungary, Iceland, Indonesia, Ireland, Israel, Italy, Jordan, Kazakhstan, Kiribati, Kyrgyzstan, Latvia, Lebanon, Lesotho, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Mali, Malta, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mongolia, Morocco, Mozambique, Namibia, Nauru, Netherlands, New Zealand, Nicaragua, Norway, Panama, Papua New Guinea, Paraguay, Peru, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Suriname, Swaziland, Sweden, Switzerland, Tajikistan, the former Yugoslav Republic of Macedonia, Timor-Leste, Turkey, Tuvalu, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Vanuatu, Venezuela, Yemen, Yugoslavia, Zambia, Zimbabwe.

Against:

Marshall Islands, Nigeria, Palau, United States of America.

Abstaining:

Algeria, Australia, Bahamas, Bangladesh, Belize, Bhutan, Brunei Darussalam, Cameroon, China, Cuba, Djibouti, Egypt, Ethiopia, Grenada, Guyana, India, Jamaica, Japan, Kenya, Kuwait, Libyan Arab Jamahiriya, Malaysia, Mauritania, Myanmar, Nepal, Oman, Pakistan, Philippines, Qatar, Russian Federation, Saint Lucia, Saudi Arabia, Singapore, Somalia, Sudan, Syrian Arab Republic, Thailand, Togo, Tunisia, United Republic of Tanzania, Uzbekistan, Viet Nam.

Draft resolution I was adopted by 127 votes to 4 with 42 abstentions (resolution 57/199).

Annex IV: Useful website

Amnesty International treaty bodies: http://web.amnesty.org/web/web.nsf/pages/treaty_home

Association for the Prevention of Torture: <http://www.apt.ch/>

European Committee for the Prevention of Torture: <http://www.cpt.coe.int/en/>

United Nations Office of the High Commissioner: <http://www.unhchr.ch/>