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COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Pre-sessional open-ended working group
on the question of a draft optional
Protocol to the Convention against
Torture and Other Cruel, Inhuman or
Degrading Treatment or Punishment
Geneva, 14-25 January 2002

**DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST
TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT
OR PUNISHMENT**

PROPOSAL BY THE CHAIRPERSON

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 from 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 these 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 or other measures,

Recalling further 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 which is 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 this 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 Sub-Committee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Sub-Committee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.
2. The Sub-Committee on Prevention shall carry out its work within the framework of the Charter of the United Nations and will 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 Sub-Committee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.
4. The Sub-Committee on Prevention and the State 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, from which this person is not permitted to leave at will by order of any judicial, administrative or other authority.

PART II

The Sub-Committee on Prevention

Article 5

1. The Sub-Committee on Prevention shall consist of ten members. After the fiftieth ratification or accession to the present Protocol, the number of the members of the Sub-Committee on Prevention shall increase to 25.
2. The members of the Sub-Committee 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 Sub-Committee due consideration shall be given to the equitable geographic distribution and to the representation of different forms of civilisation and legal systems of the States parties.
4. In this composition consideration shall also be given to the balanced gender representation on the basis of the principles of equality and non-discrimination.
5. No two members of the Sub-Committee on Prevention may be nationals of the same State.
6. The members of the Sub-Committee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Sub-Committee on Prevention efficiently.

Article 6

1. Each State party may nominate, in accordance with paragraph 2, 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. The nominees shall have the nationality of a State party to the present Protocol;
 - a. At least one of the two candidates shall have the nationality of the nominating State party;
 - b. No more than two nationals of a State party shall be nominated;
 - c. 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 State 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 which have nominated them.

Article 7

1. The members of the Sub-Committee 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 State parties shall elect the members of the Sub-Committee by secret ballot;

- d. Elections of the members of the Sub-Committee 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 Sub-Committee 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 Sub-Committee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Sub-Committee. 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 Sub-Committee on Prevention;
 - b. Where both nationals 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 member;
 - c. Where neither national 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 national shall be the member.

Article 8

If a member of the Sub-Committee on Prevention dies or resigns or for any cause can no longer perform his or her duties, the State party which 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 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 Sub-Committee 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 these members shall be chosen by lot by the Chairman of the meeting referred to in article 7 paragraph 1d.

Article 10

1. The Sub-Committee on Prevention shall elect its officers for a term of two years. They may be re-elected.
2. The Sub-Committee on Prevention shall establish its own rules of procedure. These rules shall provide inter alia that:
 - a. Half plus one members shall constitute a quorum;
 - b. Decisions of the Sub-Committee on Prevention shall be made by a majority vote of the members present;
 - c. The Sub-Committee on Prevention shall meet in camera.
3. The Secretary-General of the United Nations shall convene the initial meeting of the Sub-Committee on Prevention. After its initial meeting, the Sub-Committee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Sub-Committee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

PART III
Mandate of the Sub-Committee on Prevention

Article 11

The Sub-Committee on Prevention shall:

1. Visit the places referred to in article 4 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;
2. In regard to the national preventive mechanisms:
 - a. Advise and assist States Parties, when necessary, in their establishment;
 - b. 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;
 - c. 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;
 - d. 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;
3. 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 organisations working toward the strengthening of the protection of persons from torture and other cruel, inhuman or degrading treatment or punishment.

Article 12

In order to enable the Sub-Committee on Prevention to comply with its mandate as laid out in article 11, the State parties undertake to:

1. Receive the Sub-Committee on Prevention in its territory and grant it access to the places of detention as defined in article 4 of the present Protocol;
2. Share all relevant information the Sub-Committee on Prevention may request to evaluate the needs and measures that should be adopted in order to strengthen the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment;
3. Encourage and facilitate contacts between the Sub-Committee on Prevention and the national preventive mechanisms;
4. Examine the recommendations of the Sub-Committee on Prevention and enter into dialogue with it on possible implementation measures.

Article 13

1. The Sub-Committee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfill its mandate as established in article 11.
2. After consultations, the Sub-Committee on Prevention shall notify its programme to the States Parties for them to, without delay, make the necessary practical arrangements for the visits to take place.
3. The visits shall be conducted by at least two members of the Sub-Committee on Prevention. These members can be accompanied if needed by experts of demonstrated professional

experience and knowledge in the fields covered by the present Protocol and shall be selected from a roster of experts prepared on the basis of proposals made by the States parties, the Office of the High Commissioner for Human Rights and the United Nations Centre for 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 Sub-Committee on Prevention shall propose another expert.

4. If the Sub-Committee on Prevention considers it appropriate, it can propose a short follow-up visit to a regular visit.

Article 14

1. In order to enable the Sub-Committee on Prevention to fulfill 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 these persons as well as their conditions of detention;
 - c. Subject to paragraph 2, 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 whom the Sub-Committee 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 can only be made on 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. The existence of a declaration of a State of Emergency as such shall not be invoked by a State Party as a reason to object a visit.

Article 15

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

Article 16

1. The Sub-Committee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national mechanism.
2. The Sub-Committee 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 Sub-Committee 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 Sub-Committee on Prevention shall present a public annual report on its activities to the Committee against Torture.
4. If the State Party refuses to co-operate with the Sub-Committee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the Sub-Committee on Prevention's recommendations, the Committee against Torture may at the request of the Sub-Committee 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 Sub-Committee on Prevention's report.

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 decentralised 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 in order for the experts of the national mechanism to 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 and Functioning of National Institutions for Protection and Promotion of Human Rights.

Article 19

The national preventive mechanisms shall be granted at least the powers to:

1. Regularly examine the treatment of the persons deprived of their liberty in places according to article 4, with a view to strengthening, if necessary, their protection from torture, cruel, inhuman or degrading treatment or punishment;
2. 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, cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
3. Submit proposals and observations concerning existing or draft legislation.

Article 20

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

1. 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;
2. Access to all information referring to the treatment of these persons as well as their conditions of detention;
3. Access to all places of detention and their installations and facilities;
4. 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 whom the national preventive mechanism believes may supply relevant information;
5. The liberty to choose the places it wants to visit and the persons it wants to interview;
6. The right to have contacts with the Sub-Committee 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 organisation for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organisation 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 can make a declaration postponing the implementation of their obligations either under Part III or under 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 Sub-Committee on Prevention, the Committee against Torture may extend this period for an additional two year period.

PART VI
Financial provisions

Article 25

1. The expenditure incurred by the Sub-Committee 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 Sub-Committee under the present Protocol.

Article 26

1. A Special Fund shall be set up in accordance with General Assembly procedures, 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 Sub-Committee on Prevention to a State party after a visit, as well as education programmes of the national preventive mechanisms.
2. This 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 which has signed the Convention.
2. The present Protocol is subject to ratification by any State which 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 which 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 which 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 the 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 Sub-Committee 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 their Additional Protocols of 8 June 1997, or 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 which occurs prior to the date at which the denunciation becomes effective, or to the actions that the Sub-Committee on Prevention has decided or may decide to adopt with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Sub-Committee on Prevention prior to the date at which the denunciation becomes effective.
3. Following the date at which the denunciation of the State party becomes effective, the Sub-Committee 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 process.
3. When amendments come into force, they shall be binding on those States parties which have accepted them, other States parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 35

Members of the Sub-Committee 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 Sub-Committee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on 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 Sub-Committee 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; and
- (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.
