

## TABLE OF CONTENTS

Introduction .....	1
1. The provisions of the Protocol on national preventive mechanisms .....	2
2. The relations between NPMs and other institutions .....	3
3. General principles .....	4
4. Existing national visiting mechanisms – some examples .....	6
Bahamas - Visiting Committee .....	6
Brazil – Inspection mechanisms .....	7
India - The National Human Rights Commission's visits to places of detention ..	8
Morocco - Prison visits by national NGOs .....	10
Uganda - Uganda Human Rights Commission .....	11
United Kingdom - Prisons Inspectorate and Prisons and Probation Ombudsman .....	12
5. The way forward.....	14
Annex I: Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment .....	16
Annex II: Status of ratification of the Optional Protocol, as of 12 May 2004 .....	33



# Preventing Torture at Home - A Guide to the Establishment of National Preventive Mechanisms

## ***Introduction***

On 18 December 2002, the United Nations (UN) General Assembly adopted a new mechanism: the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Protocol).<sup>1</sup> The full text of the Protocol is provided in Annex I. As Article 1 of the Protocol states, its aim 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."*

To that end, the Protocol establishes a Sub-Committee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (Sub-Committee). By becoming party to the Protocol (namely by accepting this Protocol through ratifying it or acceding to it), a state will be obliged to allow the Sub-Committee to visit any place<sup>2</sup> under its jurisdiction "where persons are or may be deprived of their liberty" (Article 4(1))<sup>3</sup>. A state party is obliged to help the Sub-Committee in its visits, make all relevant information available to it and allow the Sub-Committee to meet any detainees it wishes to in private (Article 14) and without any negative consequences for the detainees (Article 15).

The Sub-Committee would then make confidential recommendations to the state party, to be published only with the latter's consent. However, where the state is uncooperative, or fails to take steps to improve the situation, the Sub-Committee may make a public statement (Article 16).

Uniquely for an international instrument, the Protocol also provides for establishing, designating or maintaining *national* preventive mechanisms (NPMs), namely visiting bodies

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<sup>1</sup> See Amnesty International *Preventing Torture Worldwide - The Optional Protocol to the Convention against Torture*, AI index: IOR 51/002/2003.

<sup>2</sup> There is a limited allowance, in Art. 14(2): states may make an "objection to a visit to a particular place of detention;" however, such objection "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."

<sup>3</sup> Hereafter we will use "places of detention" and "detainees" to cover the full range of places where people are deprived of their liberty under official authority, at official instigation or with its consent, and persons held in such places, and there is official involvement in such deprivation.

from within each state party, whose work will complement (but also overlap) that of the Sub-Committee.

The Protocol's relevant provisions are elaborated in Part 1 below. In what follows, Amnesty International provides guidelines on how to ensure that NPMs are set up with the requisite ingredients for effective and independent functioning, as provided for by the Protocol.

In offering these guidelines, Amnesty International draws mainly on the provisions of the Protocol itself, the UN Principles relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights ("Paris Principles")<sup>4</sup>, which the Protocol specifically mentions (in Article 18(4)), the organization's experience with national human rights institutions<sup>5</sup> and a document published by the Association for the Prevention of Torture on this issue.<sup>6</sup>

Even where NPMs are set up in full accordance with these guidelines, it is still necessary to ensure that their powers and work in practice match the formal provisions for their establishment and functioning. The third part of this document considers some examples of national institutions or organisations fulfilling functions similar to those envisioned by the Protocol, as a way of illustrating the possibilities and pitfalls in establishing NPMs.

## ***1. The provisions of the Protocol on national preventive mechanisms***

Part IV of the Protocol (Articles 17-23) is devoted to NPMs.

The Protocol provides (in Article 17) that states parties undertake to:

*"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."*

The terms "maintain, designate or establish," indicate that states could either create 'brand new' bodies or else nominate existing ones, with the appropriate modifications or adaptations, to fulfil the functions of NPMs. There is also flexibility as to whether one or more body is to be established or designated. This is important in federal states, as well as in regard to particular places of detention, such as psychiatric wards, where specialised bodies may best fulfil this function.

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<sup>4</sup> UN Commission on Human Rights Resolution 1992/54, 3 March 1992, (E/1992/22); UN General Assembly Resolution 48/134, 20 December 1993.

<sup>5</sup> See *National Human Rights Institutions: Amnesty International's recommendations for effective protection and promotion of human rights*, AI Index: IOR 40/007/2001.

<sup>6</sup> Association for the Prevention of Torture, *Implementation of the Optional Protocol to the UN Convention against Torture: The Establishment and Designation of National Preventive Mechanisms*, Geneva, November 2003.

States parties also undertake to:

- Guarantee the independence of NPMs, their funding and professionalism as well as assure that their composition is gender-balanced and representative of the population (Article 18);
- Grant NPMs powers to examine the situation of detainees regularly, make recommendations to the relevant authorities and submit proposals and observations on existing or draft legislation (Article 19);
- Guarantee NPMs unhindered access to all relevant information, including statistics, as well as to all places of detention and detainees, including the opportunity to interview detainees in private. Communications between NPMs and the Sub-Committee must also be unhindered. (Article 20);
- Ensure that no harm befalls anyone who communicates with NPMs, and that all such communications remain confidential, not to be published without the express consent of the person concerned (Article 21);
- Examine the NPMs' recommendations and enter a dialogue with them (Article 22);
- Publish and disseminate the annual reports of NPMs (Article 23).

In addition, Article 26 of the Protocol calls for setting up a special international fund to help finance the implementation of the Sub-Committee's recommendations, as well as "education programmes of the national preventive mechanisms."

## ***2. The relations between NPMs and other institutions***

This issue can be best illustrated by stating what NPMs are not. They are not judicial bodies and therefore should never be seen as a replacement or alternative to an independent, impartial, properly resourced, accessible judiciary, whose rulings are enforced.

Nor are NPMs an arm of government, which alone remains responsible for its policies concerning the prevention of torture and ill-treatment of detainees. Joining the Protocol, establishing NPMs and opening places of detention for visits by NPMs and the Sub-Committee do not detract anything from this responsibility.

NPMs are not non-government organizations (NGOs), although the Protocol does not preclude the participation of NGOs as part of a national preventive mechanism. The NGOs' role in preventing torture and ill-treatment independently of NPMs remains crucial. It is therefore important to ensure that governments which join the Protocol do not use this as an excuse to limit access of NGOs to places of detention, detainees or relevant information, or to

avoid dialogue with NGOs on issues pertaining to the treatment of detainees and conditions of detention.

Lastly, NPMs are national rather than international mechanisms, and the Protocol obviously considers it vital that their work be complemented by that of an international body - the Sub-Committee.

NPMs functioning properly will nevertheless interact with other institutions in a mutually beneficial manner. Using their position as institutions within the state structure and yet independent - and where necessary critical - of it, NPMs can constitute an effective complement to the judiciary and other institutions within the state in promoting and protecting the human rights of detainees.

NPMs can provide governments with detailed information as to the general situation within places of detention and particularly of policies or cases of torture or ill-treatment. Through their recommendations, NPMs can guide governments in suggesting ways to improve the situation of detainees.

NPMs working seriously for the protection of detainees' human rights will find in local (and international) NGOs useful and dedicated partners and should draw on their experience and knowledge.

The Geneva based Sub-Committee is likely to rely heavily on information and other assistance provided by NPMs. At the same time, NPMs would benefit from the Sub-Committee's international experience and expertise, and the combined efforts of the national and international preventive mechanisms will probably be more effective than either working on its own.

### **3. General principles**

Amnesty International believes that the following principles, which are naturally interrelated and overlapping, should guide the establishment of national preventive mechanisms (NPMs) under the Protocol:

**1. Establishment by law:** NPMs must not rely on the good will of any particular government and their founding charter should reflect this. It is essential therefore that NPMs are established by law or, preferably, by Constitutional amendment. Where NPMs are established merely by presidential or other kinds of decree, it is easier to abolish them, or to limit powers which are necessary to their effective functioning. Legislation should go beyond stating general principles, and detail measures to ensure NPMs' function and independence in practice. In federal states, or states with territories overseas, legislation should ensure that NPMs function throughout the territory under those states' jurisdiction or control.

**2. Independence:** NPMs must neither constitute part of the government, parliament, judiciary, prison system etc. - nor be perceived as such. Their independence must be

guaranteed through legislation ensuring separate and distinct administration, premises, funding and means of communication with detainees, state institutions, the public and the Sub-Committee.

**3. Adequate funding, free of political restrictions:** NPMs should be funded so as "to enable it to have its own staff and premises, in order to be independent of government and not be subject to financial control which might affect its independence." (Paris Principles). To this end, the founding legislation must provide for adequate long-term funding and deny governments the power to 'punish' NPMs for criticism by starving them of funds.

**4. Composition of NPMs – independent, capable, gender-balanced, representative:** Where NPMs are newly established, the founding legislation should include a procedure for the appointment of NPM members detailing the method, criteria and duration of the appointment, immunities and privileges, and dismissal and appeals procedures. Members should be independent experts in relevant fields (such as relevant law, human rights, psychology, medicine.) NPMs' composition should "reflect gender balance and the adequate representation of ethnic and minority groups in the country." (Article 18(2) of the Protocol). Where existing bodies are designated or maintained as NPMs, the founding legislation should be amended to ensure that the same principles apply to them.

**5. Full access to all relevant information:** NPMs must be allowed full and prompt access to all information they may need for carrying out their tasks, including the number of persons deprived of their liberty, 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.

**6. Full, safe accessibility:** all detainees, families and friends of detainees, detainees' lawyers, former detainees, staff of places of detention and any other person or organization wishing to complain or convey information to the NPM must be able to do so easily, promptly, privately and with no adverse consequences for themselves or for any detainees involved or mentioned. For that purpose, information on NPMs and on ways of contacting them should be made available to the public in general, and to all detainees in particular.

**7. Widest possible definition of 'places of detention' and 'detainees':** these terms should include, but not be limited to the following places and their inmates: police stations, military and other security forces' stations and detention centres, all pre-trial centres, remand prisons, prisons for sentenced persons, places outside prisons where prisoners are employed, hospitals or clinics where prisoners are treated, rehabilitation and similar centres for juveniles, immigration centres, transit areas at international ports, centres for detained asylum seekers, refugees or internally displaced persons, psychiatric institutions and places of administrative detention.

**8. Full, immediate, unhindered access to all places of detention and detainees:** NPMs must be allowed to visit any place of detention. Visits may be planned, announced and coordinated in advance. However, NPMs must, in addition, have the authority to arrive, unannounced, at the gates of any place of detention and be immediately admitted in, inspect all of the facility or any part they choose, for as long as they choose, and meet any detainee or staff member they wish to in private. Visits should include meetings with the directors of the

place of detention. Funding should be sufficient to provide for visits that are frequent enough to facilitate effective monitoring.

**9. Direct, unhindered, untapped communications with the Sub-Committee:** NPMs must be able to communicate or exchange whatever information they deem necessary with the Sub-Committee without the government or any of its agencies interfering, monitoring recording or demanding information on such communications in any way.

**10. NPMs' recommendations should be taken seriously:** The founding legislation should include provisions whereby NPMs are empowered, on their own initiative, to submit reports to and, where appropriate, address in person, directors of places of detention, legislative bodies, the executive and other political institutions. Mechanisms for cooperation and dialogue should include avenues for immediate contact with directors of places of detention and the executive, for instance in cases where urgent action is needed. Such mechanisms should also include forums for serious, detailed discussion of NPMs' reports and recommendations, such as committees at the ministerial, parliamentary and prison service levels.

#### ***4. Existing national visiting mechanisms – some examples***

The Protocol has not, as of May 2004, entered into force, and no NPMs have been established according to its provisions.<sup>7</sup> However, bodies that visit places of detention do exist, in a variety of forms, in many countries. What follows is the description of the constitution and work of such bodies from six countries. These descriptions illustrate the kind of difficulties NPMs may face, as well as the achievements they may attain.

##### **Bahamas - Visiting Committee**

(Bahamas has not signed the Convention against Torture.)

The Bahamas Prison Act 1943 provides for the establishment a Prison Visiting Committee whose functions include receiving complaints and visiting prisons.

The Committee meets approximately once a month (though that appeared not to happen during the period November 2001- March 2002) and on these occasions the Committee typically made a brief tour of the prison and convened in the Board Room in the maximum security section of the prison. They would then, according to the Minute Book, consider applications from prisoners (varying in number from 8-15), interviewing each applicant in turn. Depending on the number of prisoners, the Committee's visit would last approximately 3 hours.

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<sup>7</sup> Annex II contains the status of signature and ratification of the Protocol as of 12 May 2004.

Amnesty International could not find within the Visiting Committee Minute Book evidence of the Committee's inspectoral or complaint functions. Nothing was recorded regarding the Committee's conclusions as to the state of the prison such as cleanliness, overcrowding, the adequacy of facilities or supplies, the provision of work, or of prisoners formally having made complaints to the Committee and the Committee's determinations.

Although the Visiting Committee is required by the Bahamas Prison Act to file an annual report, Amnesty International has been unable to find any. Further, it appears that the Visiting Committee has never issued press releases or spoken in the media nor has communicated to other NGOs issues regarding the conditions in prisons.

Amnesty International has concluded, therefore, that the Visiting Committee does not fulfil its statutory functions. Its members may make tours of the prisons but the Committee as a whole appears to do nothing to bring the treatment of prisoners or prison conditions to the attention of Ministers, senior officials or the Bahamian public at large. There is no evidence that prisoners bring to the Committee their complaints or, if they do, that the Committee records and responds to them.

Amnesty International remains concerned over frequent reports of ill-treatment, at times amounting to torture, of criminal detainees and asylum seekers.<sup>8</sup>

## **Brazil – Inspection mechanisms**

(Brazil is a state party of the Convention against Torture and has signed the Optional Protocol.)

Several government bodies have a limited remit for inspection of places of detention, but they have not been able to bring about significant reforms in the system. There is no coordination between the various bodies, and prison/police station inspection is regarded as secondary to other official duties which receive priority and which may create a conflict of interest. Individual officials may show considerable commitment to monitoring prisons, but they are often constrained by a lack of staff and resources. Observations, recommendations or results of inspections are not made public.

Within the Ministry of Justice both the National Prisons Department and the advisory National Council on Penal Affairs are empowered to inspect prisons, as are, at the state level, Councils on Penal Affairs. Neither their annual reports nor their schedules of visits are routinely made public. As these Councils also process prisoners' requests for parole and other benefits, this creates such an excessive workload that prison inspection cannot be carried out in any in-depth or routine manner.

Within the judiciary, a judge inspector of prisons is mandated by law to carry out monthly inspections of prisons and order investigations of malpractice. In São Paulo state, the judge

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<sup>8</sup> See *Bahamas: Forgotten Detainees? Human Rights in Detention*, AI Index: AMR 14/005/2003, 1 October 2003.

inspector and 12 assistant judges are responsible for monitoring prisons in the Greater São Paulo area, for investigating complaints of ill-treatment and maladministration, as well as for overseeing the sentences of some 50,000 prisoners, and processing requests for parole, remission, pardons and so forth. This combined responsibility leaves little time available for inspecting the prisons in the Greater São Paulo region. In some states, however, the offices of the judge inspector of prisons and the judge who oversees the serving of sentences are separate. Not only does this decrease the workload, allowing the judges to carry out their duties with greater efficiency, it also eliminates the potential for conflicts of interest. At present a number of bodies with powers to inspect prisons, such as the Councils on Penal Affairs, the judges responsible for overseeing the serving of sentences, and the public prosecution service, also decide on aspects of prisoners' sentence. As a result, prisoners may not have confidence in the independence of these bodies. Where states have only the office of the sentencing court judge, judges may restrict themselves to processing the prisoners' cases, rather than taking an active interest in prisoners' well-being.

The UN Committee Against Torture, while acknowledging "[T]he establishment of various bodies intended to enhance respect for human rights" and "[T]he external monitoring of the police by the Public Prosecutor's Office and the State party's efforts to reinforce external and independent supervision through the appointment of police ombudsmen in several states," has nevertheless expressed serious concern over various issues. These include "the numerous allegations of acts of torture and cruel, inhuman or degrading treatment - in police stations, prisons and facilities belonging to the armed forces - and the de facto impunity enjoyed by the perpetrators of those acts."<sup>9</sup>

Amnesty International has also expressed deep concern over the fact that torture or other cruel, inhuman or degrading treatment is widely and systematically used in many police stations and detention centres throughout the Brazil's 26 states and in the Federal District.<sup>10</sup>

### **India - The National Human Rights Commission's visits to places of detention**

(India has signed, but not ratified the Convention against Torture)

The National Human Rights Commission (NHRC) was established in India in 1993 under the Protection of Human Rights Act (PHRA) with the mandate which includes visiting "any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon."

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<sup>9</sup> Conclusions and recommendations of the Committee against Torture: Brazil, UN Doc. A/56/44, paras.115-120, 16 May 2001, at paras.118(e), 118(g) and 119(a), respectively.

<sup>10</sup> See Amnesty International "*People end up dying here*": *Torture and ill-treatment in Brazil*, AI Index: AMR 19/027/2001.

The Commissioners include a Chairperson, who is required to have been a Chief Justice of the Supreme Court, two members, who have also been high-level judges, and two members appointed from amongst persons having knowledge of or practical experience in human rights matters.

The NHRC submits Annual Reports to the central government, which then lays them before Parliament with a memorandum of action taken or proposed actions to be taken. To date, the NHRC's Annual Reports have consistently received little attention by the central government and Parliament leading to significant delays in their being made public in line with PHRA procedures.

The NHRC have visited jails, police lock ups and detention centres, state-run children's homes, juvenile homes, women's protection homes and observation homes where juvenile offenders are held.

Following visits, the NHRC forwards observations and non-binding recommendations to the authorities operating the detention facility and to other relevant government authorities. The NHRC's Annual Reports record a mixed response to recommendations: in many cases the NHRC has received no response from the authorities and no action appears to have been taken to remedy problems, but in a minority of cases the authorities have reportedly moved to implement NHRC recommendations.

Publicly released observations and recommendations have included concerns about overcrowding, unacceptable length of detention for detainees undergoing trial, the detention of juveniles with adults, unhygienic conditions, lack of adequate health care, poor living conditions, and inadequate arrangements for education, vocational training, and rehabilitation. In some cases, the NHRC has publicly raised concerns about torture, harassment, and the non-existence of grievance redress systems.

The provisions of the Protection of Human Rights Act require the NHRC to inform authorities before visiting places of detention. Due to concerns about the impact the notification requirement potentially had on the effectiveness of NHRC visits to places of detention, Amnesty International has recommended that the relevant legislation should be amended to allow the NHRC to conduct unannounced visits to all places of detention. Amnesty International has also recommended the establishment of guidelines to ensure that officials are able to conduct interviews without witnesses, that officials are able to undertake repeated visits and that the safety of those interviewed can be assured.<sup>11</sup>

Amnesty International has on several occasions expressed grave concerns over the fact that torture and ill-treatment continue to be endemic throughout India and continue to deny human dignity to thousands of individuals.<sup>12</sup>

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<sup>11</sup> See *India: Submission to the Advisory Committee Established to Review Provisions of the Protection of Human Rights Act 1993*, AI Index: ASA 20/26/98.

<sup>12</sup> See for instance *India - Words into action: recommendations for the prevention of torture*, AI Index: ASA 20/003/2001, January 2001; *India: Break the cycle of impunity and torture in Punjab*, AI Index: ASA 20/002/2003, January 2003.

## **Morocco - Prison visits by national NGOs**

(Morocco is a state party of the Convention against Torture)

With the advances in democratisation and the development of civil society in Morocco since the early 1990s, NGOs have come to play an active role in inspecting prisons.

Two independent NGOs, the Association marocaine des droits humains (AMDH - Moroccan Human Rights Association), and the Organisation marocaine des droits humains (OMDH - Moroccan Human Rights Organization), have for some years been raising concerns about prison conditions with the authorities, whose increasing responsiveness enabled both organizations in 1998 to visit prisons and report publicly on their findings, with recommendations to the authorities. Some of the NGOs' recommendations were taken into account during the final examination of a new law on the organization and administration of penitentiary establishments, promulgated in 1999. Among other things, the law provided for the establishment of separate facilities for the detention of young people under 20, and of mothers and their infants; set standards for hygiene and access to medical care and minimum conditions for family visits; stipulated that those detained should be informed of their rights and obligations; set limits to the use of disciplinary measures such as isolation; provided for procedures of appeal against prison discipline; and established rules enabling qualified NGOs to have access to prisons.

In November 1999 a new NGO, the Observatoire marocain des prisons (OMP - Moroccan Prison Monitor), was established. Its aims are: to monitor prison conditions and the extent to which national laws and international standards are complied with; to promote the rights of prisoners; to campaign for the better application of Moroccan legislation on prisons and for widening the scope of non-custodial penalties; to contribute to rehabilitation programs for ex-convicts; to encourage increased training for prison workers; and to campaign against the death penalty.

Since its establishment, the OMP has undertaken dozens of prison visits, during which its delegates have inspected prison buildings and met and interviewed prison officials, prisoners and prisoners' families. The OMP raises its concerns directly with the prisons' administration and government authorities and issues annual reports in which it has called attention to problems of overcrowding, malnutrition, lack of hygiene, corruption, maltreatment, sexual abuse, lack of training and education, drug abuse and violence within the prisons, as well as the issue of incarcerating first-time offenders with hardened criminals. The annual reports also contain an assessment of how well the authorities are implementing the 1999 law and recommendations to the authorities.

In 2003, the UN Committee against Torture noted as a positive aspect "[T]he unlimited access to detainees and prisoners accorded to independent local NGOs."<sup>13</sup> Nevertheless, the

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<sup>13</sup> Conclusions and recommendations of the Committee against Torture: Morocco, UN Doc. CAT/C/CR/31/2, 5 February 2004, para. 4(e).

Committee noted several subjects of concern, including "the increase in the number of allegations of torture and cruel, inhuman or degrading treatment or punishment" (Para. 5(d)). Amnesty International has expressed similar concerns.<sup>14</sup>

## **Uganda - Uganda Human Rights Commission**

(Uganda is a state party of the Convention against Torture.)

The 1995 Constitution of the Republic of Uganda establishes the Uganda Human Rights Commission, whose composition, mandate and powers are set out in some detail in articles 51 to 53 of the Constitution. The broad mandate of the Commission includes investigation of alleged human rights violations, education and research on human rights issues as well as providing recommendations to Parliament on effective measures to promote human rights. Its mandate also provides specifically for visits to jails, prisons, and places of detention or related facilities with a view to assessing and inspecting conditions of the inmates and making recommendations (Article 52(1)(b)).

The Commission's powers are similar, in some respects, to those of a court, and include issuing orders requiring any person to appear before the Commission or produce documents; and questioning any person in respect to matters under investigation by the Commission. Upon findings violations of human rights, the Commission may order the release of detained persons, the payment of compensation or other legal remedy or redress.

According to its 2002 annual report, the Commission had inspected 448 places of detention, since its establishment in 1996. They carry out unannounced visits, without prior knowledge of the authorities of the detention centres. Their visits cover the whole of Uganda and include, among other places of detention, both central government prisons and local administration prisons. The aim of the inspection is to monitor the conditions of detention and their compliance with international law and standards and to make recommendations to the relevant authorities for improvements. The Commission's annual report is presented to the Ugandan Parliament.

In carrying out its visits to prisons, the Commission has focussed on the welfare of prisoners, including living conditions, capacity of wards, cells, water and sanitation, lighting and food. The Commission's visiting delegations also inspect medical facilities, as well as requiring data on death and escape rates. In the course of the visits, they meet and talk with prisoners, sometimes in private, if they so require, and ask about - as well as look for - signs of torture or ill treatment. At the end of the visit, they meet with the officer in charge of the prison and with other relevant staff.

With regards to persons detained in police stations, the Commission's findings focus on illegal detention, specially with regards to the violation of the Constitutional provision to the effect that detainees cannot be held in police detention beyond 48-hour from their arrest, without

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<sup>14</sup> See for instance *Morocco/Western Sahara: Briefing to the Committee against Torture*, AI Index: MDE 29/011/2003.

being produced in court. The Commission also reports on separation of detained persons according to gender and age, and has expressed particular concerns with regards to juveniles sharing the same cells with adults. Despite its mandate, the Commission has been unable to carry out unannounced visits to places of detention under the control of the army, the Uganda Peoples' Defence Force (UPDF). The Commission is required to notify UPDF authorities before visiting their detention facilities; to date only one inspection to UPDF places of detention has occurred, in 1998, after permission was granted.

The visiting mechanism has played an important role in improving conditions of detention through dialogue and persistent follow-up with the authorities. The Commission has also exercised its Constitutional powers of release when it found individuals to be illegally detained.

In March 2004, the Human Rights Committee recommended that Uganda "terminate practices contrary to article 7 and bring prison conditions into line with article 10 of the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners. It should also take immediate action in order to reduce overcrowding in prisons as well as the number of persons detained on pre-trial remand."<sup>15</sup>

Amnesty International has expressed concern over practices of torture and ill-treatment on a large scale in Uganda.<sup>16</sup>

## **United Kingdom - Prisons Inspectorate and Prisons and Probation Ombudsman**

(United Kingdom is a state party of the Convention against Torture and has ratified the Optional Protocol.)

The **Prisons Inspectorate for England and Wales** was established in 1980. The Inspectorate is headed by the Chief Inspector, whose duty it is to inspect or arrange for the inspection of prisons in England and Wales. The Chief Inspector reports in particular on the treatment of prisoners and conditions in prisons. The Chief Inspector works independently of the Prison Service and reports directly to the Home Secretary. The Home Secretary may also refer specific matters relating to prisons and prisoners in England and Wales to the Chief Inspector and direct him/her to report on them.

The Inspectorate has a staff of about 32 people to carry out inspections and provide support services. It also employs specialist inspectors and researchers on a consultancy basis. Some inspectors have personal experience of working in prisons, while others are specialists in areas such as health care, education, buildings and farms.

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<sup>15</sup> See Paragraph 18, conclusion and recommendations of the Human Rights Committee: Uganda, UN Doc. CCPR/CO/80/UGA, 31 March 2004.

<sup>16</sup> See Amnesty International *Uganda: Summary of human rights concerns*, AI Index: AFR 59/011/2003.

The Chief Inspector is authorised to inspect all prisons, remand centres and young offender institutions holding men, women and young people in England and Wales, including those whose management has been contracted out by the Prison Service. According to the Inspectorate website:

*"When the independent Inspectorate was established the aim was for each Prison Service establishment to be inspected fully about once every five years but, at present, HM Chief Inspector does not have sufficient resources to do so. The Inspectorate undertakes about 20 full inspections each year which are announced in the Inspection Programme. In addition, it undertakes about the same number of unannounced, usually short, inspections and follow-up inspections. Short inspections differ from full inspections in that they tend to follow up recommendations from the last full inspection or concentrate on particular issues. All Prison Service establishments are thus inspected every two to three years."*<sup>17</sup>

When invited, the Inspectorate can also carry out inspections of Immigration Service detention centres, Prison Service establishments in Northern Ireland, prisons in the Channel Islands and the Isle of Man, and overseas territories.

During a full inspection the team of inspectors looks at the way prisoners are treated; the quality of the regime including the opportunities for prisoners to work and receive education; how the establishment prepares prisoners for release; the morale of prisoners and staff; the quality of health care; how the establishment is managed; and the physical conditions of the buildings. During inspections the inspectors talk to managers, staff and prisoners individually and in groups to get their views.

The Chief Inspector is only concerned with the major issues of the treatment of prisoners and is not authorised to investigate individual prisoners' grievances, which should be directed to and investigated by the Prisons Ombudsman (see below).

Within five weeks of the end of an inspection, the Chief Inspector sends a written report, including recommendations for improvement, to the Home Secretary. Copies of the report are sent to the Prison Service. The Chief Inspector is also required to produce an annual report to be laid before Parliament.

The **Prisons and Probation Ombudsman** is appointed by and reports to the Home Secretary. The Ombudsman investigates complaints from prisoners and those subject to probation supervision. The Ombudsman is independent of both the Prison Service and the National Probation Service (NPS). From April 2004 the Ombudsman is also responsible for investigating all deaths of prisoners and residents of probation hostels and immigration detention accommodation.

Complaints must first have been aired through the internal complaints system of either the Prison Service or the NPS. The Ombudsman takes a fresh look at the complaint and decides whether it has been dealt with fairly. If the Ombudsman upholds the complaint, s/he makes recommendations to the Prison Service or the NPS.

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<sup>17</sup> See <http://www.homeoffice.gov.uk/justice/prisons/inspprison/inspection.html>.

Complainants have confidential access to the Ombudsman and no attempt may be made to prevent a complainant from referring a complaint to the Ombudsman. The Director General of the Prison Service and the National Director of the NPS are under a duty to ensure that the Ombudsman has unfettered access to the relevant service's documents, including classified material and information entrusted to that service by other organisations, provided this is solely for the purpose of investigations within the Ombudsman's terms of reference. In conducting an investigation the Ombudsman and staff are entitled to visit Prison Service or NPS establishments, after making arrangements in advance for interviewing the complainant, employees and other individuals, and for pursuing other relevant inquiries.

Following an investigation, the Ombudsman makes recommendations either to the Home Secretary, the Director General of the Prison Service or to the Director of the NPS or to the Chair of the Area Board as appropriate. The Ombudsman has a target date to give a substantive reply to the complainant within 12 weeks from accepting the complaint as eligible. The Prison Service and NPS have a target of four weeks to reply to recommendations from the Ombudsman.

The Ombudsman submits an annual report to the Home Secretary, which the Home Secretary lays before Parliament.

In 1998 the UN Committee against Torture did not directly raise issues of torture or ill-treatment in UK prisons. However, it expressed several concerns, including over the number of deaths in police custody.<sup>18</sup> More recently, Amnesty International has expressed concerns about serious human rights violations that have taken place in the UK as a consequence of the implementation of the Anti-terrorism, Crime and Security Act 2001 (ATCSA), including detention without charge or trial, i.e. internment, exclusively of people who are non-UK nationals, potentially indefinitely, and at times based on secret evidence, some of which is alleged to have been adduced as a result of torture.<sup>19</sup>

## **5. The way forward**

The absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment is one of the most fundamental human rights. This right is provided for, unequivocally, not only in the UN Convention against Torture but in a long string of other international and regional treaties and instruments spanning international human rights law, international humanitarian law and international criminal law. It is also considered a peremptory international legal rule, namely one that no state may breach, regardless of

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<sup>18</sup> Conclusions and recommendations of the Committee against Torture: United Kingdom of Great Britain and Northern Ireland UN Doc. A/54/44, 17 November 1998, paras.72-77, at para. 76(a).

<sup>19</sup> *United Kingdom: Justice perverted under the Anti-terrorism, Crime and Security Act 2001* AI Index: EUR 45/029/2003, December 2003.

whether or not it is party to relevant treaties. In addition, torture and ill-treatment are prohibited by most national constitutions and criminal legal systems.

Nevertheless, acts of torture and ill-treatment are practiced widely, both directly by governments and through failure of governments to exercise due diligence to prevent such acts by individuals and groups. Unfortunately, in recent years, and in the context of the "war on terror," there has been some questioning even of the principled opposition to torture and ill-treatment under any circumstances. Thus the Special Rapporteur on Torture has recently "*noted with concern that there was a trend in some sectors to erode the universal consensus on the prohibition of torture and the absolute nature of this prohibition.*"<sup>20</sup>

Strengthening the international legal mechanisms for enforcing the absolute prohibition on torture and ill-treatment is therefore vital at this time, perhaps more than ever, and the Protocol comes as a welcome addition to existing mechanisms. The combination of national and international visiting body for which the Protocol provides is an innovation in international law, which Amnesty International also welcomes.

Amnesty International calls on those states which have not ratified the Convention against Torture to do so, and on all states to ratify its Optional Protocol. Amnesty International calls on states to designate or establish effective, independent national preventive mechanisms in accordance with the principles laid out in part 3 of this report and the Paris Principles.

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<sup>20</sup> See Report of the Special Rapporteur on Torture, UN. Doc. E/CN.4/2004/56, 23 December 2003, para. 15.

## ***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 Optional Protocol, as of 12 May 2004**

Participant	Signature	Ratification, Accession (a)
Albania		1 Oct 2003 a
Argentina	30 Apr 2003	
Austria	25 Sep 2003	
Brazil	13 Oct 2003	
Costa Rica	4 Feb 2003	
Croatia	23 Sep 2003	
Denmark	26 Jun 2003	
Finland	23 Sep 2003	
Guatemala	25 Sep 2003	
Iceland	24 Sep 2003	
Italy	20 Aug 2003	
Madagascar	24 Sep 2003	
Mali	19 Jan 2004	
Malta	24 Sep 2003	24 Sep 2003
Mexico	23 Sep 2003	
New Zealand	23 Sep 2003	
Norway	24 Sep 2003	

Poland	5 Apr 2004	
Romania	24 Sep 2003	
Senegal	4 Feb 2003	
Serbia and Montenegro	25 Sep 2003	
Sierra Leone	26 Sep 2003	
Sweden	26 Jun 2003	
United Kingdom of Great Britain and Northern Ireland	26 Jun 2003	10 Dec 2003
Uruguay	12 Jan 2004	