

Statement of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on the 2020 review of the process of strengthening the human rights treaty body system¹

I. Introduction

1. The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment expresses its thanks to the Committee on the Rights of Persons with Disabilities and the Committee's Chair for the proposal on the 2020 review of the process of strengthening the human rights treaty body system.

2. The Subcommittee is supportive of the individual and collective efforts of each and every treaty body to strengthen the effectiveness and coherence of the system, taking into consideration that each one needs to work for the improvement of the global system and of its own mandate, especially when it is substantially different than the others. The improvement of each treaty body is also the improvement of the system as a whole and a strengthening of protection for all the rights holders.

3. The Subcommittee welcomes the proposals and is largely in agreement with the elements contained therein. It is of the view that the minimum level of financial and human resources necessary to allow the human rights treaty bodies system to perform in accordance with the provisions of the treaties is currently lacking.

4. The Subcommittee has a very specific mandate under the Optional Protocol to the Convention against Torture and, unlike other conventional treaty bodies, which consider periodic reports submitted to them by States parties, the Subcommittee has a proactive mandate whereby it visits States parties, in accordance with a programme of regular visits that it establishes under article 13 of the Optional Protocol, and issues corresponding visiting reports. In addition, it undertakes other functions mandated under article 11 of the Optional Protocol.

5. Owing to this specificity, the Subcommittee has not been able to benefit from the same attention that other treaty bodies have previously enjoyed in the context of the strengthening process. As a result, it has not seen its mandate reinforced as it should have been. Therefore, the Subcommittee presents the elements that it considers to be pertinent in supporting its mandate, on the basis of its experience, which comprises country visits, direct engagement with right holders and human rights mechanisms, and close cooperation with States parties.

6. The Subcommittee sees merit in the proposal for a predictable review cycle with focused reviews. However, as noted in the proposal, it would need

¹ Discussed at the forty-fifth and forty-sixth sessions of the Subcommittee and adopted, together with the fifteenth annual report of the Subcommittee, at its forty-sixth session, on 11 February 2022.

to be adapted for the specific mandate, context and needs of the Subcommittee, which has country visits at the core of its mandate.

7. The Optional Protocol sets the objective of establishing 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. However, it does not define the term “regular”. The Subcommittee notes that States parties are required to report to the Committee every four years on the measures they have taken to give effect to their undertakings under the Convention against Torture, as indicated in its article 19. The Subcommittee has always considered that its visits should be undertaken with at least the same frequency. However, given the current resource constraints, this is clearly not possible but remains as the mid-term objective for the Subcommittee.

8. Considering its specific mandate, it would not be appropriate or even feasible for the Subcommittee to establish a multi-year plan as to which countries it would visit, either to advise States parties or support national preventive mechanisms. The Subcommittee must retain the flexibility to decide, depending on the circumstances, which State party is to be visited and when to do so, in accordance with its mandate under the Optional Protocol. Therefore, a multi-year plan cannot include a list of country visits to be undertaken, but only a number of visits, in abstract. Only such an approach will ensure the correct mandated exercise of its preventive functions. However, it could draw from the proposal to establish, given the current resource constraints, an objective basis for calculation of the annual number of visits and meeting time to improve the sustainability and predictability of its work and of the system. A clear formula would facilitate this exercise, as per the below proposal.

II. Subcommittee country visits

9. While it cannot ensure a four-year cycle for its visiting mandate, the Subcommittee would opt for an eight-year cycle as proposed by the Covenant Committees, instead of the 10-year cycle proposed by the Committee on the Rights of Persons with Disabilities. The Subcommittee would thereby plan to carry out 91 visits within an eight-year period under that proposal, as a temporary measure, considering the current situation of 91 States parties and the established 70 national preventive mechanisms.

10. Given the current number of States parties to the Optional Protocol and national preventive mechanisms in place, this would equate to approximately 11.5 visits per year. It is estimated that the consideration and adoption of each visit report would require approximately three hours of plenary time. With 11.5 visits per year, two reports per visit (one to the State party and one to the national preventive mechanism), and three hours needed for the consideration and adoption of each report, a total of 69 hours, or 11.5 days of plenary meeting time, would be needed per year for the Subcommittee’s visiting activities.

III. Cyclic dialogues

11. In addition to its primary objective of visiting places of deprivation of liberty during country visits, under article 11 (1) (b) and (c) of the Optional Protocol, the Subcommittee also has a mandate to advise and assist States parties and to cooperate for the prevention of torture. While work required under these two mandates are usually woven into the general work done by the Subcommittee and undertaken intersessionally, the growing number of national preventive mechanisms created pursuant to the Optional Protocol and the need to meaningfully and actively engage with them and with States parties has proven that the work undertaken in this regard needs to be substantially strengthened and structured, especially in the current context where post-visit on-site dialogues and/or follow-up visits are not feasible owing to the lack of appropriate financial and human resources. Under this proposal, these cyclic dialogues mitigate the current impossibility of the Subcommittee to fully undertake its mandate of regular visits.

12. Therefore, under the current circumstances, the Subcommittee, through its regional teams, would complement its visiting programme of 91 visits within an eight-year period with thorough cyclic dialogues between visits, as proposed by the Committee on the Rights of Persons with Disabilities. In these dialogues, the Subcommittee would engage with both national preventive mechanisms and States parties (in respect of their national preventive mechanisms) on the protection of persons deprived of liberty against torture and ill-treatment.

13. With 11.5 visits, two reports per visit (one to the State party and one to the national preventive mechanism), and three hours needed for the consideration and adoption of each report, a total of 69 hours, or 11.5 days of meetings in four parallel regional groups, would be needed each year. In addition, approximately three days of Subcommittee plenary session meeting time would be required each year for dialogues with States parties and national preventive mechanisms.

IV. Other mandated activities

14. In accordance with the allocation already provided by the General Assembly in its resolution 68/268 for other human rights treaty bodies, the Subcommittee also needs two weeks of plenary meeting time per year for all other mandated activities, as currently carried out. Such activities include planning its visits; advising States parties and national preventive mechanisms; deliberating on its decisions and adopting the corresponding documentation; meeting with the Committee against Torture, pursuant to articles 10, 16 and 24 of the Optional Protocol; and meeting with States parties of the Optional Protocol and national preventive mechanisms. As noted above, these activities correspond to 10 days of plenary session meeting time per year.

15. In total, for the current 91 States parties of the Optional Protocol and the 70 established national preventive mechanisms, with between 11 and 12 visits per year, the Subcommittee would require the following:

(a) A total of 11.5 days per year for discussion and adoption of its visit reports;

(b) A total of three days per year for dialogues with States parties and national preventive mechanisms between visits;

(c) A total of 10 days per year for all other mandated activities.

16. The Subcommittee therefore requires 24.5 days per year, equivalent to approximately 5 weeks of session time, with the corresponding staff resources necessary to support the visits and the plenary sessions.

V. Corresponding staff

17. With the current number of Optional Protocol ratifications, the Subcommittee would require the support of six Professional staff at the P2/P3 level, in addition to General Service staff, to implement the above proposal with an eight-year visiting cycle and 12 visits per year, taking into consideration that:

(a) Each visit requires 20 weeks Professional staff time, in addition to the other work to be undertaken, including sessions and intersessional activities with States parties and national preventive mechanisms, among others;²

(b) A working year is, in real terms, 40 weeks.³

VI. Conclusions

18. The Subcommittee views the proposal contained herein as the minimum to allow it to fulfil meaningfully, under the present circumstances, its mandate under the provisions of the Protocol, consisting primarily of visiting States parties to the Optional Protocol, and advising those States and their national preventive mechanisms on measures to prevent torture and ill-treatment. The proposal would also have the benefit of including the Subcommittee, despite its different mandate, in the global calendar with all other human rights treaty bodies.

19. The proposal would be revised as needed, including with the increase in the number of States parties and with the establishment of new national preventive mechanisms. The Subcommittee considers that supporting States parties and national preventive mechanisms in the exercise of their obligations and ensuring that there is no protection gap for all rights holders under the Optional Protocol is a threshold that should be respected in all circumstances. The proposal reflects this understanding.

² A/73/309, paras. 47–50.

³ Ibid., para. 38, footnote 6.