**TENTH ANNIVERSARY OF THE**

**SUBCOMMITTEE TO PREVENT TORTURE**

**Remarks by**

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Congratulations to the Subcommittee and all who have struggled to make it an active, vital and innovative mechanism!

I will speak about the Committee against Torture and the Subcommittee to Prevent as ‘complementary approaches in the fight against torture,’ and about OPCAT’s added value.

When the General Assembly adopted the Convention against Torture (CAT) in 1984, it explained this was an element in “achieving a more effective implementation of the existing prohibition under international and national law of the practice of torture” ...

The GA recognized that preventing torture is not solely an international task – both international and national law are relevant, indeed essential. OPCAT has made it clear that it is not just law but international and national mechanisms that are central to eradicating torture.

OPCAT wasn’t the first UN instrument to address torture. In 1992 a working group was established to draft a new instrument. It took ten years to complete its work and got into heated arguments over the form that ‘monitoring’ would take. Would it be an international monitoring/oversight committee or would implementation be left to national bodies? Elizabeth Odio Benito – then VP of Costa Rica—chaired the working group and in 2002 presented a take it or leave it draft, proposing both that a state party would have to create a National Preventive Mechanism ( NPM) and also accept visits from an international monitoring body, the Subcommittee on Prevention (OPCAT).

Many worried that this compromise would be a setback – weakening international oversight. Today, we understand this was a complementary measure – adding value in a very substantial way, creating a unique tripartite system. Despite controversies, the OPCAT was adopted by an overwhelming vote of 127-4-42. Throughout these negotiations, CAT dispatched a member to support the negotiations and creation of the Subcommittee. The Committee’s interest in the success of the new body continues.

What’s New?

The following are new elements from the Optional Protocol:

1. Another international mechanism – a committee of 25 experts
2. Unaannounced, preventive visits to places of detention
3. Reports on the Visits

OPCAT reports are confidential unless state party gives consent to publication or fails to cooperate with visiting experts.

1. Creation of a Special Fund

Voluntary contributions have aimed at funding implementation of Subcommittee recommendations.

1. New national mechanisms

NPMs- National Preventive Mechanisms- established under OPCAT offer a new level of scrutiny, are guided by the OPCAT’s standards, and offer CAT added data and insights. The NPMs, like the Subcommittee, are also independent of the OPCAT.

The Subcommittee is treated as a separate treaty body by the ‘treaty chairs’ meetings, but not by the Convention.

New developments required by the Optional Protocol include: sharing of information; holding of simultaneous sessions; extension of a State party’s 3-year Opt Out declaration; Coordination; and Overlapping membership.

1. From the standpoint of CAT, the Optional Protocol’s most prominent addition is that it provides first-hand information about detention conditions.

OPCAT reports, when public, provide unique information on scrutiny of detention centers for CAT’s review of periodic reports under article 19.

1. OPCAT has brought NPMs directly into CAT discussions. After some mixed experiences, CAT now invites NPMs to brief the Committee in advance of article 19 reviews, and to submit information prior to preparation of Lists of Issues.
2. OPCAT experiences ‘on the ground’ have presented the members of CAT with new ideas about a number of things it examines: (a) non-traditional places of detention, “social welfare” centers, etc. (b) Gender based concerns; (c) Access issues, -- Etc

Because the Optional Protocol requires joint meetings of CAT and OPCAT, the 2 bodies have been working together, developing guidelines re visits, cooperation, and independent national mechanisms; and meeting to consider other topics. This week we had a joint program on the revised Standard Minimum Rules –the Mandela rules.

1. CAT has a bit more work because of OPCAT, but welcomes it.
2. CAT members ask States parties about ratification of OPCAT – and we encourage them to ratify.

What is not working?

The Optional Protocol sets out a number of ways the CAT and Subcommittee should interact. Many simply haven’t been functioning yet.

One factor is membership – OPCAT envisions joint membership on the Committees. This hasn’t happened yet.

A second one is coordination of visits under articles 19 and art 20. CAT has discussed this --Should an OPCAT preventive visit precede CAT’s article 19 reviews? Should an OPCAT preventive visit be precluded when CAT is engaged in an article 20 inquiry due to credible evidence of systematic torture?

Yet another is public statements by CAT. Under the Protocol, if the OPCAT Subcommittee considers that a State Party fails to cooperate, it can communicate this to CAT; the State is asked to respond and if a majority of CAT considers SP has failed to cooperate, it (the CAT, not the Subcommittee) can authorize publication of the report or make a public statement. This hasn’t been done yet.

The Protocol requires that OPCAT present its annual report to CAT, which has been the only way its substantial annual reports become public. This is not working now that Annual reports are reduced to 10,600 words—barely enough for CAT to list all the countries, cases, inquiries, comments and other activities it conducts.

Perhaps the most significant impact of OPCAT has been the added focus on prevention. For its part, CAT has issued a general comment on article 2 of the Convention, spelling out how states give effect to the obligation to prevent torture. GC2 points out that prevention of cruel, inhuman or degrading treatment or punishment is a way to prevent torture; & there is a slippery slope between torture and CIDT

The Committee against Torture has been energized by the Subcommittee, by working together with it on new ways to prevent torture.

We look forward to many more years of cooperation and finding more effective means of working together.