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**Statement by Sir Malcolm Evans**

**CHAIRPERSON**

## SUBCOMMITTEE ON PREVENTION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

74th session of the General Assembly

Third Committee

Item # 69 (a)

14 October 2019

New York



Chairperson,

Distinguished delegates, colleagues and friends,

I am pleased to be able to present to you the 12th Annual Report of the Subcommittee on Prevention of Torture (SPT, or the OPCAT Committee) and update you on its subsequent activities. I am also pleased to be doing so once again in the company of Mr Modvig, the Chair of the Committee against Torture and Mr Meltzer, the Special Rapporteur on Torture.

As you will know, the OPCAT mandates the SPT: (a) to engage in a constructive dialogue with States parties on reducing the risk of torture or ill-treatment, based on visits which it conducts to places where persons are or may be deprived of their liberty; (b) to advise and assist States parties in the establishment of their National Preventive Mechanisms (NPMs) and to engage with NPMs in the furtherance of their work; and (c) to co-operate with other international, regional and national bodies and agencies engaged in activities related to torture prevention.

The OPCAT has now been ratified by 90 countries from all regions of the world, with Iceland and South Africa joining the OPCAT system so far this year. This is an impressive number but there are still a considerable number of states parties to the Convention against Torture which have not yet done so. All States Parties to the Convention against Torture are already bound to take preventive measures by virtue of article 2 of that Convention, and it has been the longstanding position of the SPT that that obligation is best fulfilled through ratification of the OPCAT, which is entirely focussed on effective prevention.Numerous states have undertaken to do so during the course of their Universal Periodic Reviews by the Human Rights Council: but these commitments sometimes seem to be swiftly made, but slowly fulfilled. The SPT hopes that the rate of growth in participation will quicken in the coming months as more states seek to honour their commitments to ratify.

It is important to note that OPCAT States are now more evenly distributed across the world than ever before. In terms of the UN regional groupings, the greatest number of states parties are now from Africa, with 23 parties, followed by the Western European and Others with 21, the Eastern European Group with 19, 15 from the Latin American and Caribbean States and 12 from Asia-Pacific. But the reach of the OPCAT system is not only measured in terms of the numbers of states parties and their geographical distribution. That is a question of breadth. There is also the question of depth – which is reflected in the work of the National Preventive Mechanisms which have been established as a result of the OPCAT, and the work which they do from day to day.

Some 65 NPMS have been established in countries around the world - and they are listed on the website of the SPT for all to see. In fact, there are many more bodies than this which exercise an NPM function. Some federal countries have numerous separate bodies operating in each state, as well as at the federal level. Other states have numerous bodies operating in different spheres collaborating and combining to form an overall National Mechanism – different bodies but a common approach. This means that the ‘message’ of torture prevention, and the practice of torture prevention, is being carried by an ever-increasing number of bodies. It is informing and influencing the day to day work of thousands of monitors, inspectors and visitors as they exercise their powers of oversight. There is, then, a remarkable amount being done by a large number of dedicated people at the national level to implement the preventive obligations and undertake preventive visiting, and the SPT salutes and supports their work.

Unfortunately, it is equally clear that not all States Parties have fulfilled their obligation to establish an NPM. All States are obliged to establish their NPM within one year of ratification, unless they have delayed that obligation by making a declaration under Article 26 of the Optional Protocol. This means that 22 states are not in compliance with their obligations and here there are significant regional variations: 13 are in Africa (55% of all states parties in the region), 4 in Asia-Pacific (33% of all states parties in the region), 4 in the Latin American and Caribbean (25% of all states parties in the region) and 1 in Eastern Europe ( representing 5% of states parties in the region). All states parties from the Western European and Other Group have done so. There is, then, much work to be done to ensure a global culture of compliance. The SPT is committed to this task, and seeks to assist all states in whatever ways in can to support the establishment and operation of an OPCAT compliant NPM.

Moreover, for some years now the SPT has complied a list of those countries which are more than three years overdue in establishing their NPMs. These states will have had four years since the date of their ratification in which to have done so. That list remains too long, and today comprises 12 countries: Benin, Bosnia-Herzegovina, Burkina Faso, Burundi, Chile, Democratic Republic of Congo, Gabon, Liberia, Mongolia, Nauru, Nigeria and the Philippines. Since last year, Panama has been removed from the list since it has now established its mechanism, but Mongolia has had to be added. It should also be said that whilst all these countries are substantially overdue, some are egregiously so; over 10 years, for example, in the cases of Benin, Bosnia and Herzegovina, Chile, Liberia and Nigeria. These states seem to lack the will to comply with their OPCAT obligations at all, thus violating not only the letter but also the spirit of the convention.

Whilst the Protocol may be Optional, the obligation to establish the NPM is not. It is a central element of the OPCAT. All States parties are offered advice and technical assistance to assist them to do so. The SPT has explored the situation in many of these countries during its country visits and regretfully it is clear that there appears to be little urgency attached to the establishment the mechanism – and, we would therefore add, do not appear to attach much urgency to the prevention of torture and ill-treatment. Some of these countries have been visited not once, but twice and still have made no progress. All have been frequently contacted – but some have rarely replied. I appeal today to all those states parties to take responsibility for the commitments they have undertaken and call on them to honour their obligations by establishing the NPMs as they have promised.

During the course of the year the SPT has also been deeply concerned by the behaviour of some states parties in taking administrative or legislative action which has had the practical effect of seriously hampering and, in one instance – that of Brazil –in effect undermining the capacity of the NPM from conducting its work. In all such instances the SPT will honour its convention mandate to support the work of the NPM and seek to engage with the State concerned in order to resolve the situation. The importance of doing so cannot be overstated. On numerous occasions the SPT has stressed that NPMs represent the ‘front line’ in prevention. Their work is vital and is of increasing importance as the numbers of states parties continues to rise and the capacity of the SPT to undertake its own preventive visiting fails to match that growth,

Indeed, that problem is currently getting worse, not better. A few years ago the SPT was able to undertake about 10 visits each year. In recent years this has declined – and in 2018 it was only able to complete six visits, to Uruguay, Belize, Portugal, Poland, Kyrgyzstan and Liberia, due largely to a lack of secretariat capacity. This was a wholly inadequate number of visits and we had hoped that matters would improve substantially in 2019 when we planned to return to our benchmark number of ten visits per year. So far, we have visited Switzerland, Costa Rica, Sri Lanka, Senegal, Ghana, the UK and Cabo Verde – a total of seven visits. One of our announced visits – to the State of Palestine – remains frustrated by our inability to acquire necessary travel documentation from a non-state party. This is a source of immense frustration. However, we are even more frustrated by the 25% reduction in our budget for visits. This means that all of our remaining visits planned for this year have had to be shelved because of this failure to provide the funding essential for our work. This includes a visit already announced to Bulgaria, which should have already taken place. This is the first time in the history of the OPCAT that this has happened.

As many will know, earlier in the year the plenary meetings of many of the human rights treaty bodies were under threat. Thankfully that threat has been averted – but it now appears that the SPT is the only treaty body which is to suffer budgetary restrictions this year, due to the specialised nature of our visiting mandate. This is wholly improper and threatens the integrity of the OPCAT system. It has also been a great inconvenience for all those – including states parties – who had been expecting visits, and much preparatory work by very many people at the national level in governments, the NPMs and in civil society has been needlessly wasted as a result. It is imperative that the SPT has the necessary resources to undertake its visiting mandate in a planned and ordered fashion: we run the risk of ending up being able to meet to plan our work – but to not be able to undertake the actual work itself.

Time after time, the SPT reminds States Parties in its Annual Reports that the longstanding expectation is that we ought to be able to undertake visits to countries with a frequency roughly equivalent to the average reporting cycle to the other human rights treaty bodies. At around 6-7 visits per year we are operating closer to an average twelve-year cycle. This is wholly inadequate.

The SPT needs to be in contact with those states parties who have not yet established their NPMs and are seeking to do so. We have a convention mandate to advise and assist them. Frequently, states are as anxious as we are for a visit to take place in order to facilitate this. I should add that we are very much alive to benefits of electronic communication, which we use it frequently during our sessions (and outside of them) in order to be in contact with states and NPMs alike. But there are limits to what this can achieve, as states themselves acknowledge. We need to have the capacity to visit them in order to provide the detailed and on-site expertise that they request and require.

One thing, however, is completely obvious: you cannot visit a place of detention remotely. The entire point of the OPCAT system is that it allows SPT members access to closed places where persons are deprived of their liberty; to interview detainees and staff; to see the conditions of detention and to learn from those who work in detention and justice systems what happens in practice. The aim is to better to understand the realities facing those in detention and to offer practical, focussed advice on how to improve the protections against ill-treatment. This just cannot be done from afar. It is just impossible. Indeed, the Optional Protocol is specific in what it requires: that SPT members have immediate and unannounced access to places where persons are or may be deprived of their liberty within the jurisdiction of states parties. Generally, we find that states individually are happy to honour that obligation when we undertake our visits. The problem we now face is that States collectively are refusing to provide the minimum of means necessary to allow this to happen. This must not be allowed to continue. You cannot have an international anti-torture visiting mechanism which is denied the practical possibility of conducting its programmed visits.

We aim to have an open and honest exchange, even if that is at times a difficult one. Running systems of detention is not easy but it is one of the privileges of statehood that one can do so, and one of the key obligations of statehood that its systems of security and justice are themselves just. If I am a little strident in my words today it is not because of frustration at the difficulties faced by the NPMs and the SPT. It is because of my frustration at the manifest failure of so many systems of justice to act justly to those over whom they exercise power. It also because of and frustration at the plight of so many of the most vulnerable in our societies who look to the state for help in their need but who are treated in ways truly best described as inhuman. People are not statistics, and speaking with honesty about what is really happening in places where people find themselves detained is absolutely essential if there is to be real change. And real change is needed.

We are not naïve. We know the problems which those responsible for running detention settings face, and the pressures on those who seek to bring the guilty to justice and to make society safe for all. But we also know that there can never, ever, be any excuse for the cruelties which we sometimes encounter. The chaining of persons with disabilities so that they are lying in their own excrement; interrogation of suspects conducted with plastic bags tied over their heads, barbed electric batons used as a means of maintaining routine order; sexual abuse of men, women and children as forms of interrogation, punishment or just as a part of the ‘way of life’ in some detention settings. Routine beatings of suspects in myriad ways; purposively painful shackling and routine humiliations. The lack of provision or food and water, the utterly insanitary nature of so-called toilets (or the lack of any at all); the deprivation of contact with the outside world, the isolation and controlling behaviours which profoundly affect mental health for life. And let us not forget the staff who are required to work in such settings. They too are negatively affected by what they are required to do. Then there is the reality of the lack of any real safeguards against ill-treatment – the constant reference to constitutional provisions of protections which are not worth the paper they are written on in practice. Corruption at so many levels and in so many different ways. Systems which there to help, but which fail to even begin to do so. Utterly inadequate medical provision, and so much more besides.

I am yet to hear a single serious rejection of the truth of what we find: how could there be? We have seen it for ourselves. The entire point of the OPCAT system – of the NPMs and of the SPT – is to work together with states to address such realities. Budget cuts and inadequate support does not really hurt the SPT: it hurts the detainees who are the beneficiaries of what we do.

Fortunately, there are positives to report too. We have, for the first time, been able to have interpretation when we meet in dual chambers – a major step forwards which rightly allows all members to contribute more fully to the work of the SPT. As I have indicated, an increasing number of states are making our reports public. Whilst many NPMs are still be established, many others which are newly established are finding their feet and the impact of their work is growing. There is greater recognition in many states of the breath of the NPM mandate, which is not confined to ‘traditional places’ of detention but to places of de facto detention too, including in social care settings. Numerous NPMs have had their capacities increased so that they can take on these challenges, with positive results for all concerned. Above all, in many states the OPCAT system is reaching a point of maturity in that the NPM and the national authorities increasingly enjoy a relationship based on respect preventive visiting which is now becoming a matter of established routine, and all the more effective for that.

In addition, I am pleased to report that at least 20 countries have benefitted directly from assistance provided by the OHCHR towards establishing or strengthening NPMs. This includes projects supported by the OPCAT Special Fund, established in accordance with the convention in order to implement SPT recommendations. Since the fund became fully operationalized in 2016, numerous projects have specifically contributed to this, including through assistance in drafting NPM laws, or their strengthening, such as by developing plans of actions, guidelines, visiting methodologies, training NPM members and other stakeholders, preparing communications strategy and advocacy, enhancing collaboration with stakeholders, developing web platform and mobile applications to improve monitoring and more besides. This has been a real success story, and I should like to take this opportunity to thank those countries which have supported the Special Fund, and encourage others to consider doing so. It is a way of tangibly demonstrating support for the prevention of torture and the OPCAT system.

This has also been a year of renewal for the SPT in some ways too. At the end of last year eight of our members left us, and at our Plenary session in February we welcomed eight newly elected members who bring a wealth of experience and new perspectives to our work. Whilst it is always sad to say goodbye to colleagues who have become friends and who have given so much to the work of the OPCAT over so many years, it is exciting to get to know our new friends and to work with them. I am pleased to say that despite a turnover of a third of our membership, the SPT remains geographically diverse and reflective of its states parties and is as close to gender balanced as a Committee of 25 permits, with 12 female and 13 male members. The secretariat remain steadfast in their support of the membership and in their commitment to their work, despite called upon to do far more than they ought. I also wish to acknowledge the excellent support and assistance which we receive from the OHCHR Technical Assistance Division and from OHCHR and UN offices and agencies around the world.

Finally, I think it is appropriate for me to conclude by thanking my colleagues Mr Meltzer and Mr Modvig for their work and for the ever-closer working relationship which are able to forge. Inevitably, the differences in our mandates mean that the focuses of our work are somewhat different but it is so important that we are working in a harmonious and mutually supportive fashion. I am pleased to say that I believe this to be the case and the SPT is anxious to ensure that this continues and deepens in future. We also hope that in future years a representative of the Voluntary Fund for Victims of Torture will be able to join us in this interactive dialogue with the 3rd Committee. They are a vital part of the response of the UN to torture and to its prevention.

Despite the difficulties faced in recent times, it is important to remain focussed on the immense achievements which have already come about as a result of the OPCAT system and to seek to ensure that they are built on and expanded in the year that lies ahead. We will continue to plan to deliver our benchmark 10 visits, as well to continue our support for the process of establishing NPMs in those states which have not yet done so. We will also continue to offer guidance and advice to NPMs and work with our partner organisations at the international and regional levels, as our OPCAT mandate provides. The extent to which we can do this is not entirely in our hands. What is in our hands is our commitment to the prevention of torture, and I can assure that this remains entirely undiminished.

Let me thank you for your kind attention and I look forward to responding to your questions.

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