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Statement by Sir Malcolm Evans

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

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Chairperson,

Distinguished delegates, colleagues and friends,

I am pleased to be able to present to you the 11th 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. Together with the Voluntary Fund for Victims of Torture, we seek to offer a complementary and comprehensive response to torture: through systems of primary prevention, oversight, critical review, practical intervention and victim support. Increasingly, we view ourselves as a cohesive system, drawing on and supporting each other in what we do. Recent administrative changes in the Office of the High Commissioner have assisted by drawing our respective bodies even closer together and we hope that this will have a positive impact on our work in the near future. For let me be quite clear: the good work done by the SPT, by my colleagues here today, and by other across the UN human rights treaty bodies, special procedures and other related bodies, is work wasted if it is without impact. And the key message which I wish to deliver today, speaking on behalf of the SPT, is that there is need for much more attention to be paid to the practical implementation of what we – by which I mean all those mechanisms represented on this platform - have to say if there is to be meaningful improvements in protection and prevention.

As you will know, the OPCAT mandates the OPCAT Committee: (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 88 countries from all regions of the world. Whilst 88 States Parties is an impressive number, this still means that approaching half of the States Parties to the Convention against Torture have not yet committed themselves to the prevention of torture through OPCAT. 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 most fully fulfilled through ratification of the OPCAT, which is entirely focussed on effective prevention.

The Convention against Torture Initiative, led by Chile, Denmark, Ghana, Indonesia and Morocco, rightly presses for universal ratification of that Convention. Although during Universal Periodic Review States are routinely called on to ratify the OPCAT, it remains the case that the General Assembly in its Resolutions on Torture does not accord an equal priority to the ratification of the OPCAT. Last year I remarked that ‘If a State is truly committed to the prohibition of torture – a *jus cogens* norm of international law – then it is very difficult to understand why it ought to be reluctant to become a party to a mechanism that is entirely focussed on working co-operatively and collaboratively with states – and in confidence at the international level – in order to prevent torture from happening’. This is worth repeating. Serious academic study has shown that preventive measures as recommended by the SPT and by the NPMs do work to reduce the incidence of torture. It is not a theory, it is a fact.

In our view, the establishment of an OPCAT compliant NPM is key to effective prevention. Since this time last year the OPCAT family has increased through the adhesion of Afghanistan, Australia, Palestine and Sri Lanka All are now obliged to establish their National Preventive Mechanism within one year of ratification, except for Australia which has made a declaration under Article 24 of the OPCAT delaying the obligation for three years, as it is entitled to do. We recognise that this can be a challenge, and so I am delighted that we have had rapid and very positive contacts with some of our new States Parties. This bodes well for the establishment of OPCAT compliant NPMs in the near future. It is clear that it is much easier for us to give assistance in the establishment of NPMs where there are supportive UN field presences, and we are very grateful to them for their help. It is important that all elements of the UN protective and support systems are operating in harmony with each other if effective outcomes are to be efficiently reached. Of course, this is not the case in every country yet it is vital that those contacts do take place as soon as possible. The SPT has for many years made it clear that the establishment of OPCAT compliant NPMs would be greatly assisted if a short visit were made to all newly ratifying states - as a matter of routine –for just a day or so: not to visit places of detention but simply to meet face to face with those who are tasked (or who should be tasked) in each country with the job of getting the NPMs up and running. Where this has happened, it has always been of great value and has helped ensure that the NPM is established in accordance with OPCAT principles from the outset. It is most unfortunately that the lack of resources

prevents us from assisting states in this vital process. If we were able to do so, it might mean that fewer states would end up in default of their OPCAT obligation to establish an NPM in a timely fashion.

Although over 60 NPMS have been established in countries around the world – a major success story – it remains the case that a significant number of OPCAT state parties have failed to do so. We were delighted that, after some years of intensive work, Argentina and Cambodia has been removed from the list published on the SPT website of those countries in which the establishment of NPMs is significantly overdue. Nevertheless, the list remains too long, and currently comprises: Benin, Bosnia-Herzegovina, Burkina Faso, Burundi, Chile, Democratic Republic of Congo, Gabon, Liberia, Nauru, Nigeria, Panama and the Philippines. The obligation to establish an NPM is a central element of the OPCAT. We just do not understand why these states believe that they do not need to do so. Each of them has been approached with offers of advice and technical assistance on numerous occasions. The SPT has explored the situation in many of these countries during its country visits. And yet in none of these countries does there appear to be any serious commitment of which we are aware to establish effective systems of national preventive systems. Our offers, requests and recommendations are just ignored – in clear disregard for international law and the rights of those in detention. We will continue to do what we can, but at the end of the day a State either takes its international obligations in respect of torture prevention seriously, or it does not. Those states which have not established their NPM as they ought do not appear to the SPT to be taking their obligations very seriously at all. We remain, however, fully committed to working constructively with them when they are willing to do so, and will continue to press for case for compliance.

Whilst establishing NPMs in accordance with the OPCAT criteria is a key obligation of states parties, so is receiving visits from the SPT itself. Even though the number of states parties continues to rise, the capacity of the SPT to undertake visits has decreased in the last year due to a shortage of staff able to organise and service those visits. We are delighted that our secretariat is about to be bolstered by a seconded member of staff from Denmark, but it remains the case that our core secretariat supported by the OHCHR is far too few to properly support the work of the SPT, despite their high levels of professionalism and commitment. There are limits to what even the best staff can do. As a result, we have had to reduce the number of visits undertaken by 20%, to around 8 this year from the 10 which we were able to undertake in 2015 and 2016. As we point out in our Annual Report, 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 8 visits a year, we are now operating on the basis of an eleven year visiting cycle.

This is not what prevention requires. It bears repeating that the point of prevention is to try to ensure that violations of fundamental rights do not take place. It is not about investigating allegations, and it is not about seeking to hold individuals or countries to account by making findings that torture has taken place. Preventive visiting is about seeking to understand the nature of any problems which need to be addressed, making constructive recommendations about what might be done to reduce the risk of ill-treatment, then working together through discussion to bring about positive change. Even after eleven years of our existence, I am afraid that this is not universally understood. Too many states still seem to think that our deciding to undertake a visit is in some sense a ‘hostile act’. It is not. It is our chance to work together on prevention.

As you will know, we take our visiting mandate very seriously. The integrity of the OPCAT system depends on our being able to undertake visits at the time of our choosing to places of our choosing and to be able to have full and unfettered access to all persons and all parts of detention facilities, and to be able to speak in privacy and confidence with detainees who likewise believe that they will be able to speak with us in privacy, confidence and safety. We are aware that this allows us access to some of the most sensitive places in the countries that we visit. We understand that there may be a sense of nervousness about our doing so, which we do our best to dispel. In recent times I have had to report that an increasing number of states were showing some reluctance to accept our visits. I am pleased to say that that trend has been reversed and more recently most states have understood and accepted our mandate without question. We are very pleased about this – as it makes our job, and that of our Secretariat, very much easier and helps ensure the best possible relations between ourselves and the states concerned.

Unfortunately, this record of improvement has been marred by our decision to have to terminate one of our visits – to Rwanda – due to our inability to undertake the visit in accordance with the terms of the OPCAT. We have now undertaken nearly 70 visits and only on two previous occasions have we had to pause, in order to allow the states in question to address certain problems which were preventing us from conducting our visit properly. In both those previous instances those problems were resolved and our visits were re-activated and successfully

concluded. In this instance, this has not proven possible. We greatly regret this, but hope that we will be able to undertake an effective and OPCAT compliant visit to Rwanda in the near future. This notwithstanding, we have otherwise had a successful year. Since I last reported, visits have been undertaken to Spain, Morocco, Burkina Faso, Uruguay, Belize, Portugal, Poland and Kyrgyzstan. A visit to Liberia will commence soon, and future visits to Burundi, Costa Rica, Senegal and Switzerland have all been announced. Reports from all visits are produced and transmitted as swiftly as possible – and then the real work begins. The essence of prevention does not lie in the visits themselves, but in the response to the recommendations which are made following the visits. We are convinced that our work could be even more effective if more time and resource could be devoted to the implementation of recommendations. There is considerable scope for improving the quality and intensity of our post visit dialogue. Once again, this is best conducted face to face, ‘with the report on the table’: but this tends to be the exception, not the rule. We are now benefitting from some support from the Technical Assistance fund of OHCHR, but as we look to the future, we know this is an area in which improvement is not only desirable, but necessary.

Nevertheless, I should like to make a general reflection at this point. Our reports (which are confidential) do set out in some detail those problems which we have identified during our visits. Some may find their content surprising, even shocking. But it is rarely the case that the content of our report come as a great surprise to the state itself. In one sense, this is a good thing: it shows that the State is (as it ought to be) aware of the realities of its detention system. It shows that the SPT is identifying those realities and this shared understanding provides a good basis for constructive discussion. But in another sense, it is quite shocking: these realities are known, if not to all, at least to some in authority. So why does it take visits from national or international bodies to prompt discussion or action? This only reinforces the need for the OPCAT and its mechanisms – rarely do we discovered what is unknown – but we be a real catalyst for change.

Looking forward, an area of concern relates to our plenary sessions. We currently have three weeks per year in which to undertake all our planning, revise and update internal working documents, work with states on the establishment of NPMs in about 20 countries, engagement with the ongoing work of around 60 or more NPMs, adoption of up to 8 visit reports, reviewing dialogue arising from nearly 70 visits, discuss and adopt considered positions in the light of requests from NPMs and others, meet with other actors and feed into other relevant processes as our convention mandate requires. This is just not possible. We were therefore pleased when

approval was given last year for our having an additional week of plenary meeting time – but utterly aghast when it became clear that there would be no additional staffing resource to permit it to be used – and so it did not happen. This is an appalling state of affairs – in which this Assembly gives with one hand and takes away with another; to give the appearance of action but to ensure that nothing actually happens in reality. And in the meanwhile, much time, effort, energy and expense has been wasted. This is not preventing torture, or protecting human rights, but playing games at the expense of the weak and the vulnerable whom we are all meant to be serving.

For all these reasons, it is important that we use what we have as effectively as possible. And in that spirit, I am pleased to report that during the course of the year the SPT has been able to conclude an understanding with the European Committee on the Prevention of Torture, established under the 1987 European Convention for the Prevention of Torture, on ways to enhance our work within the Council of Europe area. Such an understanding is expressly mandated by Article 31 of the OPCAT but this has not hitherto been systematically explored. Whilst fully respecting the principles of confidentiality, we will seek to operate in a more aligned fashion, consciously seeking to build on each other's work and focussing on complementary rather than duplication of activities, based on our respective mandates, strengths and capacities. We are also particularly conscious that there is a nearly complete set of NPMs established within OPCAT countries party to the European Convention for the Prevention of Torture, meaning that there are also additional tiers of domestic as well as international preventive oversight. This again reinforces the case for a 'joined up' approach, which seeks to ensure that the NPMs, the CPT and the SPT work cohesively with States Parties in ensuring effective prevention.

During the year the SPT has also been pleased to have contributed towards two major practical initiatives. The first, led by the OHCHR Technical Assistance Division, has been the production of an excellent publication in the UN Professional Training Series, 'Preventing torture: the Role of National Preventive Mechanisms', which is intended as a Guide for States as well as NPMs themselves. The second is the Alliance for Torture Free Trade, led by Argentina, the EU and Mongolia. The SPT strongly supports this, and for some time we have been seeking to improve our knowledge in this area through our collaboration with the Omega Foundation and have worked with them in producing Guidelines for monitors. This is another example of how the SPT is actively exploring the connection between torture and other societal phenomena which, in its experience, help drive ill-treatment in places of detention. As mentioned in our Annual

Report, the SPT has also spent time further reflecting on the situation of immigration detainees and the necessary safeguards which need to be put in place for those who so frequently find themselves in non-traditional places of detention to which the more general rules do not necessarily apply.

We would also wish to draw attention once again to the OPCAT Special Fund, established under Article 26 of the OPCAT. Following a ‘strategic pause’ last year, the fund was able to resume its grant programme thanks to a number of generous donations in 2018 from Argentina, the Czech Republic, France, Germany, Norway and Spain. The importance of this fund cannot be understated. It has now supported, or is supporting, close to 50 projects around the world helping to improve prevention in many of the countries we have visited and which have published our reports. This is another major success story for the OPCAT system – but it is of course completely dependent on the willingness of states to support this work. Were 50 states to give \$20,000 per year, the future of the fund would be bright. Currently, it remains precarious and I would call on all states to consider making a donation – and donations can be made by non-states parties too!

As I draw to a conclusion, I am conscious that this has been a year of mixed fortunes for the SPT. We have seen many positive developments in terms of further ratifications and the establishment of NPMs. At the same time, we have seen some scaling back of our activities as a result of resourcing issues, and there has also been the regrettable necessity of terminating a visit prematurely. More positively, there has been excellent collaboration with partners both within and beyond the OHCHR and the UN more generally – and above all else the idea of looking at human rights issues through the lens of prevention is increasing prominent. We think this is right. There must always be remedies for breach; there must always be accountability for perpetrators, there must always be redress for victims and survivors. But above all there has to be less opportunity for torture to take place – and that is what the OPCAT is intended to help achieve.

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