

Replies and Comments:

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Focus

**Optional Protocol to the
Convention Against
torture and Other Cruel,
Inhuman or Degrading
Treatment or Punishment**

“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 of punishment (hereinafter referred to as the national preventive mechanism”

“Article 16. 4. If the State Party refuses to co-operate with the Sub-Committee on Prevention [...], or to take steps to improve the situation [...], the Committee against Torture may at the request of the Sub-Committee 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 Sub-Committee on Prevention's report.

**New hope on the international level for the prevention of torture
and other forms of ill-treatment**

On December 18, 2002, the UN General Assembly adopted the Optional Protocol to the Convention against Torture by a vote of 127 in favour, 4 against (Nigeria, USA, Palau, the Marshall Islands), and 42 abstentions. This is the happy end of a long process initiated by Costa Rica and Switzerland and supported by many NGOs.

This new supervisory system aims at preventing violations of the Torture Convention and in this regard, it is the first United Nations human rights instrument that provides for prevention at the international level. The Optional Protocol is similar to the mechanism set up in the 1987 European Convention for the Prevention of Torture as it provides for the establishment of a committee composed of international experts who visit places of detention. State parties pledge to give unrestricted access to, as well as all information concerning, these places. After a visit, this team, called the Sub-Committee on Prevention, prepares a confidential report containing recommendations and submits it to the State party. Only with the agreement of the State party can the report be made public. However, according to article 16, if the State Party refuses to co-operate with the Sub-Committee on Prevention or does not try to improve the situation in the mentioned places of detention, the Committee against Torture may then decide that the text should be published. Given the success of the European system that led to a wide range of improvements, such as better police supervision, new legal standards, or the closing of certain detention facilities, much hope is put into this new UN instrument for the prevention of torture and other forms of ill-treatment.

Another innovation is the introduction of a system of national bodies empowered to visit places where people are deprived of their liberty. In article 3, State parties agree to establish one or more independent national preventive mechanisms for the prevention of torture at the domestic level. These bodies are allowed to visit places of detention, to make recommendations to the authorities as well as to submit proposals concerning laws relevant to places of detention. The Sub-Committee on Prevention is requested to assist the national mechanisms in these tasks, to advise, and to make recommendations to the State party as to the functions, powers and composition of these bodies. However, there is no enforcement mechanism to ensure that such bodies are created, that they are given access to places of detention and that their recommendations will be followed. The only possible enforcement tool is the publication of the report of the Sub-Committee on Prevention that would point at the deficiencies of the national preventive mechanism.

Responsibility

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