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COMMISSION ON HUMAN RIGHTS

Thirty-seventh session

Item 10 (a) of the draft provisional agenda

Note by the Secretariat

The representative of Costa Rica to the Commission on Human Rights has transmitted the text of the Draft Optional Protocol to the Draft International Convention against Torture and other Cruel, Inhuman or Degrading Treatment, prepared by the International Commission of Jurists, for use as a basis for consideration by the Commission on Human Rights when once the Convention has been adopted.

DRAFT OPTIONAL PROTOCOL
TO THE
DRAFT INTERNATIONAL CONVENTION AGAINST TORTURE AND OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The States Parties to the present Protocol,

Considering that in order further to achieve the purpose of the International Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and the implementation of its provisions, it would be appropriate to establish an independent International Committee authorised to arrange visits to places of detention of all kinds under the jurisdiction of the States Parties to the present Protocol and to report thereon with recommendations to the governments concerned,

Have agreed as follows:

Article 1

1. A State Party to the Convention that becomes a party to the present Protocol agrees to permit visits in accordance with the terms of the present Protocol to any place (hereinafter referred to as a place of detention) subject to the jurisdiction of a State Party where persons are held who have been deprived of their liberty for any reason, including persons under investigation by the law enforcement authorities, civil or military, persons in preventive, administrative or re-educative detention, persons who are being prosecuted or punished for any offence and persons in custody for medical reasons;

2. A place of detention within the meaning of this Article shall not include any place which representatives or delegates of a Protecting Power or of the International Committee of the Red Cross are entitled to visit and do visit pursuant to the Geneva Conventions of 1949 and their additional protocols of 1977.

Article 2

Exceptional circumstances, such as a state of war, state of siege, state of emergency or the passing of emergency legislation shall not suspend the application of the present Protocol.

Article 3

1. The States Parties to the present Protocol shall meet in Assembly once a year. They shall be convened by the Government of ... or such other Government as may accept their request to do so.

2. The Assembly shall elect the members of an International Committee responsible for the application of the present Protocol (hereinafter referred to as the Committee); shall adopt the budget for implementing the present Protocol, shall consider the general reports of the Committee and any other matters relating to the present Protocol and its application, and shall give general directions to the Committee.

Article 4

1. The Committee shall be composed of 10 members until such time as there are not less than 25 States Parties to the present Protocol. Thereafter the Committee shall be composed of 18 members.

2. The members of the Committee shall be persons of high moral character and recognised competence in the field of human rights and in the matters dealt with in the Convention and the present Protocol.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 5

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in Article 4 and nominated for the purpose by the States Parties to the present Protocol.

2. Each State Party may nominate not more than four persons or, where there are not less than 25 States Parties, not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 6

1. The members of the Committee shall be elected for a term of four years. However, at the first election half of the members shall be elected for two years. Thereafter, elections shall be held every two years for half of the members of the Committee.

2. Initially the Committee shall not include more than two members from the same State. When there are more than 10 States Parties to the present Protocol, the Committee shall not include more than one member from the same State, save that members elected while there were ten States Parties or less shall continue to serve for the unexpired portion of their term.

3. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilisation and of the different legal systems.

Article 7

1. The Committee shall meet for regular sessions twice a year, and for special sessions at the initiative of its Chairman or at the request of not less than one third of its members.

2. The Committee shall adopt its own rules of procedure. Its decisions shall be taken by a majority of its members present and voting.

3. Half of the members shall constitute a quorum.

Article 8

1. The Committee shall be responsible for arranging visits to places of detention subject to the jurisdiction of the States Parties to the present Convention.

2. The Committee shall establish a programme of regular visits to each of the said State Parties and shall arrange such further visits as may appear necessary from time to time.

Article 9

1. The Committee may nominate as its delegates to carry out such visits one or more persons being members of the Committee or members of a panel of qualified persons chosen by the Committee from among the nationals of the States Parties to the present Protocol.
2. Members of the said panel shall be nominated for periods of three years. Their names shall be communicated to the States Parties to the present Protocol.
3. A State Party may exceptionally and for confidential reasons given confidentially to the Committee declare that a particular delegate will not be acceptable as a visitor to its territory.

Article 10

1. Subject to the provisions of Article 9, paragraph 3, when the Government of a State Party to the present Protocol has been informed of a mission assigned to one or more delegate(s), the latter shall be authorised to visit in all circumstances and without previous notice any place of detention within the jurisdiction of the State Party.
2. The delegates shall receive from the State Party concerned all facilities for the accomplishment of their task. They may, in particular, obtain all information about the places where there are persons deprived of their liberty and interview them there without witnesses and at leisure.
3. Delegates may enter into contact with the families, friends and lawyers of persons deprived of their liberty.
4. During each visit, the delegates shall verify that persons deprived of their liberty are being treated in conformity with the provisions of the Convention.
5. If appropriate, they shall at once submit observations and recommendations to the competent authorities of the State Party concerned.
6. They shall submit a full report on their mission, with their observations and recommendations, to the Committee.

Article 11

1. The Committee, after considering a report of its delegates, shall inform the State Party concerned in confidence of its findings and, if necessary, make recommendations. It may initiate consultations with the State Party with a view to furthering the protection of persons deprived of their liberty.
2. With the consent of the State Party concerned the Committee may publish its findings and recommendations in whole or in part.
3. In the event of a disagreement between the State Party concerned and the Committee as to the Committee's findings or as to the implementation of its recommendations, the Committee may at its discretion publish its findings or recommendations or both in whole or in part.
4. The Committee shall submit to the annual Assembly a general report which shall be made public.

Article 12

1. The Committee shall appoint a Secretary-General and one or more assistants.
2. Under the authority of the Committee the Secretary-General shall carry out the tasks assigned to him by the Committee and shall be responsible for the day to day administration in the implementation of the present Protocol. He shall appoint the members of the secretariat.
3. He shall collect information from all available sources pertaining to the treatment of persons deprived of their liberty within the jurisdiction of the States Parties. He shall not communicate the source of any such information to the State Party concerned without the consent of the informant.
4. Between sessions of the Committee, if it appears to the Secretary-General that an urgent mission is required to one or more places of detention within the jurisdiction of a State Party, the Secretary-General may, with the agreement of the Chairman of the Committee, organise a mission to the State Party concerned and such mission shall be entitled to the same rights and facilities as a mission authorised by the Committee.

Article 13

1. Each State Party shall contribute to the expenditure incurred in the implementation of the present Protocol on the basis of the scale used by the United Nations Organization.
2. The draft annual budget, after approval by the Committee, shall be submitted by the Secretary-General to the annual Assembly of the States Parties.

Article 14

1. The present Protocol is open for signature by any State which has signed the Convention.
2. The present Protocol is subject to ratification or accession by any State which has ratified or acceded to the Convention. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.
3. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 15

1. Subject to the entry into force of the Convention, the present Protocol shall enter into force three months after the deposit of the fifth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit of the fifth instrument of ratification or instrument of accession the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 16

Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall inform the other States Parties and the Committee. Denunciation shall take effect one year after the date of receipt of the notification. Denunciation shall not affect the execution of measures authorised prior to it.

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