



The mandate of preventive monitoring- what does it mean?

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The main obligations under the OPCAT- a quick re-cap

- OPCAT: a different human rights treaty. Main obligation of states parties:
 - Contains no new substantive rights and does not seek to provide redress for breach of any substantive rights;
 - *Raison d'être*: pre-empt the occurrence of a breach of most fundamental human right: freedom from torture. The main avenues for achieving this:
 - Establishment of the SPT (at the international level) and NPMs (at the national levels), both of which are charged with preventive mandates.

Powers that NPMs are to have pursuant to the OPCAT

The NPMs are to have a right to (Article 19 of the OPCAT):

- (a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4;
- (b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other ill-treatment, taking into consideration the relevant norms of the United Nations;
- (c) To submit proposals and observations concerning existing or draft legislation.

In order to carry out these functions, Article 20 requires that NPMs are to have:

- (a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
- (b) Access to all information referring to the treatment of those persons as well as their conditions of detention;
- (c) Access to all places of detention and their installations and facilities;
- (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;
- (e) The liberty to choose the places they want to visit and the persons they want to interview;
- (f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Powers that NPMs are to have pursuant to the OPCAT (continued)

- In addition, the NPMs are to issue recommendations to the competent authorities which are obliged to examine these and enter into dialogue with the NPM on possible implementation measures (Article 22 of the OPCAT);
- States parties are to publish and disseminate the annual reports of the NPMs (Article 23 of the OPCAT);
- Article 21 provides for guarantees against reprisals against anyone who has communicated with the NPM as well as guarantees of confidentiality of information collected by the NPM (Article 21);
- Finally, Article 35 stipulates that the members of NPMs (just as those of the SPT) are to be accorded such privileges and immunities as are necessary for the independent exercise of their functions.

The visiting mandate of the NPMs

- Article 4 (2) of the OPCAT and scope of ‘deprivation of liberty’: ‘any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.’
- Article 4 (1): visits are to be conducted ‘where persons are *or may be deprived* of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.’
- Article 29: ‘The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions’.

Aims of monitoring

- Visits are conducted with the aim ‘to **prevent** torture and other cruel, inhuman or degrading treatment or punishment’ (Art. 1 of the OPCAT).
- However such visits are also said to:
 - Provide robust independent scrutiny
 - Offer assurance to the public
 - To ensure that rights of those detained are respected at all times and provide assurance of their welfare while in custody
 - Contribute to improving performance of the establishment in question
 - Contribute to policy development

Regularity of Visits

- ‘System of regular visits’- Article I of OPCAT- how often?
- UN Special Rapporteur on Torture:
 - ‘In order to maintain a deterrent effect, national visiting bodies should carry out visits to larger or more controversial places of detention every few months, and in certain cases at even shorter intervals’.
- CPT: weekly or at least monthly visits recommended at times (In Finland, three-year interval to a prison ‘far from sufficient to ensure adequate continuous supervision by an outside body’).
- The main rule: OPCAT requires **pro-active visiting** as opposed to a visit in response to complaints received
- State practice- considerations in respect of regularity:
 - What type of detention;
 - How long are people detained there;
 - Any known risk factors?

Monitoring Teams

- Article 18 (2): NPMs are to be composed of experts that have required capabilities and professional knowledge; there should be gender balance and adequate representation of ethnic and minority groups in the country;
 - Lawyers, social workers, doctors (forensics, psychiatrists and psychologists) and nurses, specialists in substance use, race relations experts, researchers etc.
 - Possibility to contract-in the required expertise.
- Size of the team- commensurate with the size and specifics of the establishment and with the duration of the visit.

Visiting Methodology

- Inspection methodology- central to the success of the visit as:
 - Allows the visit to be conducted in a methodical and systematic manner;
 - Ensures credibility and legitimacy;
 - Ensures comprehensive approach so as to cover all aspects of detention and all installations of the establishment;
 - Allows to make grounded conclusions and recommendations.

Visiting Methodology: Country Examples

- In the UK, Her Majesty's Inspectorate for Prisons 'Inspections Manual' (2008):
 - Published inspection criteria
 - Referenced against international human rights and penal norms, as well as domestic best practice
 - Over 300 detailed and practical criteria
 - Cover all aspects of treatment and conditions
 - With clear guide as to what evidence inspectors will look for
- In Estonia, the Office of Chancellor of Justice:
 - ' Guidelines for conducting of inspection visits', approved by the Chancellor of Justice- regulates the procedure of the visit.

The main elements of visiting methodology and types of visits

- **Unimpeded access to all places of deprivation of liberty:** to all installations of the particular establishment, all departments, workshops, cells etc; to all documents (including medical files and custody records); CCTV records (if such exist);
- **Unimpeded access to all the relevant people:** interviews (if necessary- private) with those deprived of liberty as well as staff members (prison officers, police officers, staff members and other employees (doctors, nurses, teachers, volunteers etc); others (families of detained, lawyers);
- **Types of visits:**
 - Announced and unannounced visits;
 - Shorter follow-up visits;
 - Thematic visits (allow for more systemic comments as illuminates strategic failures).

Conducting Visit: Stage I

- **Preparation for the visit:**
 - To identify the establishment and find out all the relevant background information: what type of establishment; how many persons detained; when last visited by any visiting bodies (lay schemes, NGOs, National Human Rights Institution, parliamentarians etc; any visits from regional or international visiting bodies?); own earlier visits.
 - To identify the visiting team (how many; what expertise);
 - To make the necessary logistical arrangements (announced/unannounced visit; timing of visit; transport etc)

Conducting Visit: Stage II

- **Conducting the actual visit:**
 - Initial meeting with the management (to introduce the visiting team; to get most up-to-date information about the establishment);
 - Visiting the establishment: all installations of the establishment; interviews with detainees, staff and any one the NPM deems necessary; inspecting the relevant documents like medical records and custody records;
 - The different 'categories' of detainees, for example, in prison: remand prisoners, prisoners with disabilities, juveniles, women etc.
 - Complaints: should the NPM take complaints from detainees during the monitoring visit? State practice so far suggests this function needs to be kept separate.

Conducting Visit: Stage II (continued)

- What to look for during the visit? How to assess?
- Experience of the UK- Four 'healthy prison' tests:
 - **Safety** – detainees, even the most vulnerable are held safely, and for example not subject to abuse
 - **Respect** – detainees are treated with respect for their human dignity, for example not held in inhuman or degrading conditions and that physical, medical, psychological and spiritual needs addressed
 - **Activity** – prisoners are able, and expected, to engage in activity that is likely to benefit them, and not merely locked in their cells
 - **Preparation for release** – prisoners are prepared for release into the community, and helped to reduce their likelihood of re-offending, and not made worse by their experience in detention

Conducting Visit: Stage III

- Process of Dialogue:
 - **Immediate de-brief** with the management of the institutions, reflecting on the visit and raising concerns (either really crucial ones which call for immediate action or minor ones which would require little from the management to address);
 - **Writing of Report** on the visit and issuing Recommendations: short term; mid-term and long term recommendations;
 - **Publication of the Report** (different from NPM Annual Report): as soon as possible to avoid 'old news' criticism.
 - *? To what extent the draft report should be discussed with the prison authorities?*

Follow-Up Process

- Visits are not an aim in themselves but rather a tool to bring about change;
- Preventive visiting has broader remit, requires more holistic approach; it aims to identify systemic problems and challenges;
- Essential element: process of follow-up and dialogue with the authorities about the implementation. OPCAT requires the authorities to enter into dialogue with the NPM about the implementation of recommendations.
 - In the UK, Action Plan from prison required within 3 months and Progress Report- after 12 months time.
 - In Estonia, the follow-up visit normally takes after 6 months.

Essential elements of a visit

- Vigorous impartiality, objectivity and independence of the visiting team as such and of its members (including the outside experts);
- Unimpeded access, with possibility of unannounced visits;
- Independent inspection criteria, referenced to international human rights norms;
- A methodology that hears the voice of detainees;
- Unimpeded right to publish reports;
- Sufficient resources, media status, a tough skin and a commitment to support improvement.