



# **The role of the Subcommittee on Prevention of Torture under the OPCAT**

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

- OPCAT: a different human rights treaty:
  - 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.
    - SPT- UN treaty body of the 'new generation'.

# The composition of the SPT and main working principles

- 10 members serving in individual capacity (to be increased to 25 after 50<sup>th</sup> ratification- expansion of the SPT thus in 2010);
- The current Members of the SPT:
  - Mr. Victor Manuel RODRIGUEZ RESCIA (Chairperson) Costa Rica (2012)
  - Mr. Hans Draminsky PETERSEN (Vice-Chairperson) Denmark (2010)
  - Mr. Mario Luis CORIOLANO (Vice-Chairperson) Argentina (2012)
  - Mr. Malcolm EVANS UK (2012)
  - Ms. Marija DEFINIS GOJANOVIC Croatia (2010)
  - Mr. Zdenek HAJEK Czech Republic (2012)
  - Mr. Zbigniew LASOCH Poland (2012)
  - Mr. Miguel SARRE IGUINIZ Mexico (2010)
  - Mr. Wilder TAYLER SOUTO Uruguay (2010)
  - Mr. Emilio GINÉS SANTIDRIÁN Spain (2010)
- Article 2 (3): SPT guided by principles of confidentiality, impartiality, non-selectivity, universality and objectivity.

# The mandate of the SPT: Article I I of the OPCAT

'1. The Subcommittee on Prevention shall:

- (a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
- (b) In regard to the national preventive mechanisms:
  - (i) Advise and assist States Parties, when necessary, in their establishment;
  - (ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;
  - (iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
  - (iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;
- (c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.'

# The visiting mandate of the SPT

- Visits are conducted with the aim ‘to **prevent** torture and other cruel, inhuman or degrading treatment or punishment’ (Art. 1 of the OPCAT);
- Scope of ‘deprivation of liberty’ within the meaning of Article 4 of the OPCAT;
- Programme of visits: Article 13 of the OPCAT. So far the SPT has visited Maldives, Mauritius, Sweden, Paraguay, Benin, Mexico and Honduras; forthcoming: Cambodia in Dec 2009.
- Factors influencing the choice of the countries:
  - The first three chosen by a lot (Art. 13 (1) of the OPCAT);
  - Reasoned process afterwards, based on such considerations as date of OPCAT ratification/development of NPMs; geographical distribution; size and complexity of state; regional preventive monitoring; urgent issues reported.
  - Estimated frequency: once every five years on average.

# Content of the SPT visit to a country

- Distinction in the drafting process between a **visit** and **mission**;
- Article 11 (a): visit places referred to in Art. 4 of the OPCAT and make recommendations to states parties. Remit of the visiting mandate: Art. 12 and 14 (unimpeded access; access to all relevant information; right to have private interviews etc);
- Engagement with other actors: various governmental departments and agencies, NPMs, NHRIs, NGOs,
- Outcome: a confidential report (Art. 16 of the OPCAT); possibility of publication;
- Non-compliance: public statement or publication of the report by the CAT (Art. 16 (4) of the OPCAT).

# Engagement with the states regarding the NPMs

- SPT- advisor to the states also in relation to their NPMs as Art. II (b) of the OPCAT provides:
  - '(i) Advise and assist States Parties, when necessary, in their (NPM) establishment;
  - (iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment'
- So far: writing to all states parties; information on the SPT web site about designated NPMs; NPM Guidelines in the 1<sup>st</sup> Annual Report of the SPT.
- Engagement with the states in country visits (see also published reports by Sweden and Maldives and some details about the NPM in Mexico in the 2<sup>nd</sup> Annual Report).

# Engagement with the NPMs

- Article II (b):
  - ‘(ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;
  - (iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment’
- ‘direct contact’ with the NPMs as stipulated in OPCAT;
- So far: writing to all states parties; information on the SPT web site about designated NPMs; NPM Guidelines in the 1<sup>st</sup> Annual Report of the SPT.
- In-country engagement with the Estonian NPM in September 2009;
- The CoE project on the assistance to the NPMs.



# Cooperation with other mechanisms

- The idea of ‘system of visits to places of detention’:
  - Art. 11 (c ): the SPT shall ‘Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.’
  - Art. 31: encouragement of cooperation between the SPT and other regional mechanisms with the view of ‘avoiding duplication’
    - Europe: CPT and CoE Commissioner for Human Rights;
    - UN: Special Rapporteur on Torture and Working Group on Arbitrary Detentions.
  - Art. 32: International Committee of Red Cross

# What is the role of the SPT?

- As United Nations treaty body, the SPT is charged with the mandate to prevent torture and inhuman or degrading treatment or punishment and in executing this task, five roles of the SPT can be distinguished:
  1. SPT as **visiting body** that carries out preventive visits to places of deprivation of liberty;
  2. **Holding states to account**: when exercising its visiting mandate to places of deprivation of liberty and ensuring that NPMs have been designated;
  3. **Advisor to the states** (on improving their legal systems so as to eliminate any threats to torture and other ill-treatment; on strengthening the mandates of the NPMs);
  4. **Advisor to the NPMs** (how to improve their work and strengthen their mandate);
  5. **Part of the web** of international, regional and national mechanisms charged with the mandate to prevent torture and other forms of ill-treatment.