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The Subcommittee for the Prevention of Torture: challenges to its effectiveness due to poor cooperation and lack of access to institutions

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Table of Contents

INTRODUCTION.....	3
Chapter 1.....	7
1.1. Concept of Torture Prevention.....	7
1.1.1. <i>Concept of Torture according to international human rights law</i>	7
1.1.2. <i>Concept of Torture Prevention according to the SPT</i>	11
1.2. Background of the SPT	12
1.3. Composition and structure of the SPT	16
1.3.1. <i>Professional Experience</i>	17
1.3.2. <i>Equitable geographical distribution</i>	18
1.3.3. <i>Gender balance</i>	19
1.3.4. <i>Independence and impartiality</i>	20
1.4. The SPT country visits	21
1.4.1. <i>Before the visit</i>	22
1.4.2. <i>During the visit</i>	25
1.4.3. <i>After the visit</i>	27
1.5. Advisory function of the SPT.....	28
Chapter 2.....	32
2.1. Challenges to the work of the SPT	32
2.2. Lack of Resources	33
2.3. The Principle of Confidentiality	35
2.4. Access to extraterritorial detention centers	36
2.5. Lack of access to institutions	37
2.6. Australia	43
2.7. The United Kingdom	54
Chapter 3.....	62
3.1 National Preventive Mechanisms (NPMs).....	63
3.1.1. <i>Structure of NPMs</i>	64
3.1.2. <i>Empowerment of NPMs</i>	65

<i>3.1.3. Cooperation with NPMs</i>	67
<i>3.1.4. Engagement during visits</i>	68
<i>3.1.5. Engagement outside visits</i>	70
<i>3.1.6. Challenges to cooperation</i>	71
3.2. Committee against Torture (CAT)	73
3.3. Committee for the Prevention of Torture (CPT)	78
CONCLUSION	88

INTRODUCTION

Torture, an act that violates human rights, is deemed illegal under international law, specifically under the United Nations Convention Against Torture (CAT). Despite the possibility of certain types of physical and psychological abuse in correctional facilities, their prevalence is contingent on the specific institutional and national practices and conditions. Notwithstanding, it is essential to emphasize that the occurrence of even a single incident of torture is intolerable and necessitates a comprehensive investigation and prosecution.¹

Violence in prisons is often hidden and can be easily overlooked, but authorities must protect prisoners from violence which hinders rehabilitation, occurs mostly in high-security facilities, and affects around 25% of prisoners annually, while prevention efforts can be achieved by identifying at-risk groups and creating a positive prison climate.² In international law, the ban on torture is considered a peremptory norm (*jus cogens*) which implies that it is prohibited for all countries under any circumstances.³

The Subcommittee on Prevention of Torture (SPT) was created as an independent international entity under the Optional Protocol to the Convention Against Torture (OPCAT), with the principal goal of averting torture and ill-treatment in detention facilities, encompassing prisons, while promoting compliance with the CAT.⁴ Despite its paramount mandate to prevent torture and mistreatment in detention settings, the SPT's effectiveness is undermined by several hurdles, such as insufficient resources, divergent

¹ United Nations General Assembly. (1948). *Universal declaration of human rights* (217 [III] A). Paris, France. Art. 5. Available at: <http://www.un.org/en/universal-declaration-human-rights/>.

² Modvig, Jens. (2014). *Violence, sexual abuse and torture in prisons*. *Prisons and Health*. WHO European Region. pp. 19-24. Retrieved from: https://www.euro.who.int/_data/assets/pdf_file/0010/249193/Prisons-and-Health,-4-Violence,-sexual-abuse-and-torture-in-prisons.pdf.

³ Evans, Rebecca. (2020). *The Ethics of Torture: Definitions, History, and Institutions*. Oxford Research Encyclopedia of International Studies. Oxford University Press. Retrieved from: <https://doi.org/10.1093/acrefore/9780190846626.013.326>.

⁴ United Nations General Assembly. (9 January 2003). *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment*, A/RES/57/199. Available at: <https://www.refworld.org/docid/3de6490b9>.

legal frameworks, impediments imposed by authorities, and political influence, underscoring the crucial importance of thwarting torture and ill-treatment in detention centers.⁵

The SPT employs state visits as its primary approach to prevent torture. However, the SPT's effectiveness is impeded when governments obstruct its access to institutions or interviewees, or when the UN fails to provide adequate funding. These obstacles must be overcome immediately to enable the SPT to fulfill its mandate from the international community. The OPCAT was established in 2002 to make prevention a central part of the fight against torture.⁶ This paper examines the SPT's role in the tripartite system of OPCAT and the challenges it confronts. Although the SPT is the primary instrument and has many rights, it faces several difficulties, including a shortage of human and financial resources, impediments to accessing institutions or interviewees imposed by states, and limited visits and meetings. This paper will explore some of these challenges in depth.

The SPT's work to prevent torture is dependent on its ability to conduct state visits, which can be hindered by a variety of factors. To successfully carry out its mandate, it is crucial that the obstacles to access and funding are resolved. The OPCAT, which emphasizes prevention as a crucial aspect of the fight against torture, has been ratified by 90 states and is the first international agreement to legally require specific commitments to torture prevention.⁷ Nevertheless, the SPT still faces various challenges despite its significant role and rights. This paper aims to explore some of these obstacles, including insufficient financial and human resources, difficulties in accessing institutions or interviewees imposed by states, and a limited number of visits and meetings.

⁵ Evans, Malcolm. (2020). Statement Delivered at the 75th Session of the General Assembly. Third Committee. Item # 69 (a). New York. Retrieved from: https://www.globaldetentionproject.org/wp-content/uploads/2020/11/Statement_OPDAT_GA75.pdf.

⁶ United Nations Treaty Collection. (n.d.). Parties to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Retrieved from: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9-b&chapter=4&clang=en [Accessed 14 February 2023]

⁷ Ibid.

The thesis comprises three chapters, with each one focusing on various aspects of torture prevention, the SPT, and its mandate, as well as the issues and difficulties the SPT faces while carrying out its work. Moreover, it also delves into the SPT's collaboration with other regional and international organizations concerning torture prevention, enforcement, and related matters. The primary objective of this thesis is to provide a comprehensive understanding of the role of the SPT in torture prevention and its significance in the global community's efforts to eliminate torture. The first chapter focuses on the concept of torture prevention in international law, examining the various legal frameworks and standards that exist. The SPT, a key player in this area, will also be introduced, and its mandate explored in detail, including its key functions, and the composition of the SPT. In particular, this chapter will examine the SPT's methods for carrying out visits, which is the main method employed by the SPT for promoting torture prevention. The objective is to provide an in-depth understanding of the SPT's work, its structure, and its relevance to the international community's efforts to prevent torture.

The second chapter of this thesis will undertake a thorough analysis of the challenges confronting the SPT in their mission to prevent torture. These difficulties include a dearth of financial and human resources, the existence of diverse legal and institutional frameworks among states, issues stemming from the principle of confidentiality, and obstacles imposed by government authorities. The chapter's initial emphasis will be on the SPT's struggle to gain access to detention facilities, a problem that is all too common in many countries around the world. In order to illustrate these challenges, we will provide case examples of specific countries. We will then shift our focus to two countries in particular, namely the United Kingdom and Australia. Through a detailed examination of these two states, we will assess their compatibility with the SPT's mission and highlight the difficulties that they have encountered in their respective prison systems. By exploring these case studies, we will gain a better understanding of the obstacles that the SPT faces in their efforts to prevent torture, and how they can overcome these challenges to fulfill their mandate more effectively.

In the last chapter, we will explore one of the primary duties of the Subcommittee, which is to engage in collaborative efforts with other human rights organizations. The Subcommittee's collaboration with national, regional, and international bodies, in order, National Preventative Mechanisms (NPM), European Committee on Prevention of

Torture (CPT), and Committee against Torture (CAT) will be examined, and challenges will be addressed. We will also address the challenges associated with such collaborations. To provide a better understanding of their working methodologies and the ways in which they can cooperate with the SPT, we will provide a brief introduction to each of these human rights bodies. Through this analysis, we will explore the various challenges that arise during such partnerships and consider potential solutions.

Research on the effectiveness of the Subcommittee is significant for several reasons. First, it can help to hold the SPT and the countries it visits accountable for their actions, promoting greater accountability. Second, it can identify areas where the SPT is succeeding and areas where it needs to improve, leading to learning and improvement. Third, it can inform decisions about funding and resource allocation to support the Subcommittee's efforts to prevent torture and promote human rights. Fourth, it can inform advocacy efforts to combat torture and ill-treatment by highlighting the impact of the SPT's work. Overall, research on the effectiveness of the SPT is important for improving the prevention of torture and promoting human rights, ensuring that the SPT's efforts are as effective and impactful as possible.

Chapter 1

1.1. Concept of Torture Prevention

1.1.1. *Concept of Torture according to international human rights law*

The practise of torture has a long history, dating back to ancient times. Despite the abolition of torture officially in the judicial systems in Western countries during the 18th and 19th centuries, its use remains widespread worldwide. The use of torture increased especially during the 20th century.⁸ Freedom from torture was the most violated human right to one's physical integrity throughout the last quarter of the 20th century.⁹ There are two reasons of dramatic rise of the practice of torture during that time:

1. Many wars, including World War I and II, the Vietnam War, and the Gulf War, resulted in widespread use of torture against prisoners of war, partisans, and civilians from conquered nations.;
2. The meaning of treason evolved as the concept of sovereignty evolved and the acts considered treasonous grew in number, which resulted widespread use of torture.¹⁰

Torture practice did not stop after the biggest wars in history. Despite the fact that the number of wars decreased in comparison to the last century, the use of torture still kept continuing in different contexts. In April 2004, CBS News aired '60 Minutes II' broadcasts that exposed the use of torture against prisoners in Abu Ghraib prison by British and U.S. military personnel in Iraq. Photographs of abused prisoners made public

⁸ Einolf, Christopher. J. (2007). *The Fall and Rise of Torture: A Comparative and Historical Analysis*. Sociological Theory, 25(2). American Sociological Association. pp. 104–105. Available at: <http://www.jstor.org/stable/20453071>

⁹ Cingranelli, David. L., & David L. Richards. (2010). *The Cingranelli and Richards (CIRI) Human Rights Data Project*. Human Rights Quarterly, 32(2). pp. 421-422. The Johns Hopkins University Press. Available at: <http://www.jstor.org/stable/40783984>

¹⁰ Einolf, Christopher. J. *The Fall and Rise of Torture: A Comparative and Historical Analysis*. p. 101.

sensation.¹¹ Another example of scandal torture case of the 21st century is Guantanamo Bay prison, which opened 21 years ago for purpose of war on torture after 11 September terror attack under Bush administration in Cuba. Unfortunately, the camp still is not closed despite promises from presidents after George W. Bush.¹² Although, today torture prevention mechanisms and instruments developed gradually, there are many examples of torture cases.

The use of torture is prohibited globally because it is considered a severe violation of human rights, and the horrors committed through its use (especially by the Nazis) have led to international agreements and covenants that prohibit it.¹³ The prohibition is absolute and cannot be justified in any situation, including war, emergencies, or terrorism. The universal acceptance of prohibition of torture has made it a fundamental principle of international law, even for states that have not signed any anti-torture treaties.¹⁴ The prohibition of torture is considered a jus cogens norm, which means it cannot be altered by any treaty or agreement.¹⁵

The Universal Declaration of Human Rights (UDHR), which was a seminal moment in the history of human rights, banned torture, but it lacked the binding power on states.¹⁶

Article 5 of the UDHR states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." This article, which is regarded as the cornerstone of international human rights legislation, serves as a fundamental proclamation against

¹¹ Leung, Rebecca. (2004, May 6). *Abuse At Abu Ghraib*. CBS News. Retrieved from: <https://www.cbsnews.com/news/abuse-at-abu-ghraib/>.

¹² Adayfi, Mansoor. (2023, January 11). *I survived Guantánamo. Why is it still open 21 years later? The Guardian*. Retrieved from: <https://www.theguardian.com/commentisfree/2023/jan/11/i-survived-guantanamo-why-is-it-still-open-21-years-later>.

¹³ Nowak, Manfred. *Prohibition of Torture* in Nowak, M., Januszewski, K.M., & Hofstätter, T. (2012). *All human rights for all: Vienna manual on human rights*. p. 346.

¹⁴ Association for the Prevention of Torture and Centre for Justice and International Law. (2008). *Torture in International Law: A Guide to jurisprudence*. p. 2.

¹⁵ Rodley, Nigel S. *Integrity of the person* in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran. *International Human Rights Law*. (2010). p. 212.

¹⁶ United Nations General Assembly. (10 December 1948). *Universal Declaration of Human Rights*, 217 A (III). Art. 5. Available at: <https://www.refworld.org/docid/3ae6b3712c.html>.

torture and other cruel treatment. The absolute and non-derogable prohibition on torture means that it cannot be abrogated in any situation, including times of war, public emergencies, or risks to national security. The commentary on Article 5 highlights how crucial it is to guarantee that everyone's mental and physical integrity is respected and the need for effective measures to prevent and combat acts of torture and other forms of ill-treatment.¹⁷

The International Covenant on Civil and Political Rights (ICCPR) is another important human right instrument which is a legally binding treaty and prohibits use of torture. However, none of these documents provided a definition for torture and ill-treatment.¹⁸ According to Article 7 of the ICCPR, which expands on the UDHR's prohibition on torture, this article is a crucial part of international human rights law. The commentary on Article 7 emphasizes how torture and other cruel treatment are prohibited in all situations, including times of war, public emergencies, and dangers to national security, and that this prohibition is unequivocal. The obligation of nations to prevent and properly handle acts of torture and other types of ill-treatment, as well as the duty to provide victims with adequate remedies and restitution, are also emphasized. In order to safeguard people's bodily and mental integrity and uphold their human dignity, the ICCPR and Article 7 are crucial.¹⁹

The Human Rights Committee (HRC) has said that breaches of Article 7 of the International Covenant on Civil and Political Rights (ICCPR) may differ based on factors such as the age, gender, or health of the victim. The difference between Article 7 and

¹⁷ Schmidt, Markus. (1994). *The Universal Declaration of Human Rights: A Commentary*. Edited by Asbjørn Eide, Gudmundur Alfredsson, Göran Melander, et al. Oslo: Scandinavian University Press. (1992). *American Journal of International Law*, 88(3). pp. 557-559. doi:10.2307/2203731

¹⁸ United Nations General Assembly. (16 December 1966). *International Covenant on Civil and Political Rights*, United Nations, Treaty Series, vol. 999. p. 171. Available at: <https://www.refworld.org/docid/3ae6b3aa0.html> [accessed 1 February 2023]. Art.7.

¹⁹ Taylor, Paul. M. (2020). *A Commentary on the International Covenant on Civil and Political Rights*. In *A Commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights*. Cambridge: Cambridge University Press. pp. 171 – 173.

Article 10 is in the types of situations they cover.²⁰ The HRC is more likely to use Article 10 in regard to violations involving the overall conditions of detention²¹, while Article 7 is applied when an individual is specifically targeted as opposed to other detainees. Each case must be evaluated separately to determine if either article of the ICCPR prohibiting torture or cruel, inhuman, or degrading treatment has been violated. The state has a duty to protect people from acts that fall under Article 7 and Article 10 committed by private individuals, as the ICCPR does not limit violations to those committed by official sources.²²

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) was the first document which gave definition to torture and requires states to take measures to prevent it, as well as all forms of ill-treatment, such as cruel, inhuman, or degrading treatment or punishment.²³ The UNCAT is a crucial tool that offers measures to prevent torture, including but not limited to: criminalizing and punishing torture²⁴, educating and training law enforcement, medical, and public officials involved in detention and treatment of those deprived of freedom²⁵, reviewing interrogation procedures²⁶, conducting prompt and impartial investigations of suspected torture cases²⁷, allowing individuals to report instances of torture with protection against intimidation²⁸, examining torture allegations fairly²⁹, providing redress for torture victims, and disallowing evidence obtained through torture in court proceedings.³⁰

²⁰ Association for the Prevention of Torture (APT). (2008). *Torture in International Law: A Guide to jurisprudence*. p. 6. Retrieved from: <https://policehumanrightsresources.org/torture-in-international-law-a-guide-to-jurisprudence>.

²¹ *International Covenant on Civil and Political Rights*. Art. 10.

²² *Torture in International Law: A Guide to jurisprudence* (2008), p. 6.

²³ United Nations General Assembly. (10 December 1984). *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. United Nations, Treaty Series, vol. 1465, p. 85. Available at: <https://www.refworld.org/docid/3ae6b3a94.html> [accessed 2 February 2023], Art. 1.

²⁴ *Ibid.* Art. 4

²⁵ *Ibid.* Art 10

²⁶ *Ibid.* Art 11

²⁷ *Ibid.* Art 12

²⁸ *Ibid.* Art 13

²⁹ *Ibid.* Art 14

³⁰ *Ibid.* Art 15

There are several torture prevention human rights instruments which prohibit torture besides above-mentioned documents in international and regional level. Some of these are Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1975)³¹, the Istanbul Protocol (2004)³², Basic Principles for the Treatment of Prisoners (1990)³³, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)³⁴ and regional instruments such as Inter-American Convention to Prevent and Punish Torture (1985)³⁵, European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)³⁶, African Charter on Human and People's Rights (1981)³⁷.

1.1.2. Concept of Torture Prevention according to the SPT

The Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment (OPCAT) provides for the creation of two bodies tasked with monitoring instances of torture: the Subcommittee on Prevention of Torture

³¹ United Nations General Assembly. (9 December 1975). *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, A/RES/3452(XXX). Available at: <https://www.refworld.org/docid/3b00f1c030.html>

³² United Nations Office of the High Commissioner for Human Rights (OHCHR). (2004). *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol")*, HR/P/PT/8/Rev.1. Available at: <https://www.refworld.org/docid/4638aca62.htm>

³³ United Nations General Assembly. (28 March 1991). *Basic Principles for the Treatment of Prisoners: resolution / adopted by the General Assembly*, A/RES/45/111. Available at: <https://www.refworld.org/docid/48abd5740.html>

³⁴ United Nations General Assembly. (9 December 1988). *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment : resolution / adopted by the General Assembly*, A/RES/43/173. Available at: <https://www.refworld.org/docid/3b00f219c.html>

³⁵ Organization of American States (OAS). (9 December 1985). *Inter-American Convention to Prevent and Punish Torture*, OAS Treaty Series, No. 67. Available at: <https://www.refworld.org/docid/3ae6b3620.html>

³⁶ Council of Europe. (4 November 1950). *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, ETS 5. Available at: <https://www.refworld.org/docid/3ae6b3b04.html>

³⁷ Organization of African Unity (OAU). (27 June 1981). *African Charter on Human and Peoples' Rights ("Banjul Charter")*, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58. Available at: <https://www.refworld.org/docid/3ae6b3630.html>

(SPT), a UN treaty body, and National Preventive Mechanisms (NPMs). The SPT has various responsibilities, including visiting places of detention within the territories of state parties to improve the protection of those deprived of their liberty³⁸, advising state parties on the formation of NPMs³⁹, and maintaining communication with these bodies.⁴⁰ Visiting places of detention is a crucial aspect of the SPT's preventive mandate, as it serves as a deterrent to acts of torture in these environments where officials often have complete control. According to Manfred Novak, a former UN Special Rapporteur on Torture, exposing places of detention to public scrutiny is the only way to break the cycle of torture and make security personnel accountable for external monitoring.⁴¹

The SPT is a unique type of treaty-based body within the UN human rights system, focused solely on prevention. The OPCAT Preamble states that the best way to protect individuals who are deprived of their liberty is through regular visits to detention facilities, conducted through nonjudicial means.⁴² The OPCAT does not establish new standards, but reinforces existing obligations found in Articles 2 and 16 of the UNCAT.⁴³ The main accomplishment of the OPCAT is the creation of a preventive visit system at both the international and national level. These visits not only decrease the risk of torture, but also result in significant improvements in the often poor conditions of detention facilities when opened up to external scrutiny.⁴⁴

1.2. Background of the SPT

The roots of the Optional Protocol are almost as old as the Torture Convention itself. After the Second World War torture and other forms of ill treatment were the central

³⁸ The Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Art. 4.

³⁹ Ibid. art. 11(b)(i).

⁴⁰ Ibid. art. 11(b)(ii).

⁴¹ UN Special Rapporteur on Torture. (14 August 2006). *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*. UN Doc A/61/259. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/468/15/PDF/N0646815.pdf?OpenElement>

⁴² The OPCAT. Preamble.

⁴³ The UNCAT. Art. 2 and Art. 16.

⁴⁴ Nowak, Manfred. *Prohibition of Torture*.

component for human rights instruments.⁴⁵ Following the 1970s resurgence of torture, such as British use of so called five technics during the Troubles against detainees who were suspected to be Provisional Irish Republican Army (IRA) member in interrogations in Northern Ireland⁴⁶ and during military regime in Brazil⁴⁷, it was vital to adopt an international instrument to prevent it. As a result, in 1975 the UN Declaration against Torture⁴⁸ and in 1984 the Convention against Torture were adopted⁴⁹.

The idea of a mechanism to visit states goes back to mid 1970s. A Swiss jurist and banker Jean-Jacques Gautier put this idea first. He argued that prevention of torture cannot be achieved only by the adoption of text-based instruments, and an international mechanism must be created which would have the power to inspect and visit places where people deprived of their liberty.⁵⁰ The idea was influenced by practice of the International Committee of the Red Cross during the Second World War. His idea was undertaken by the Swiss Committee against Torture which since 1992 has been renamed the Association for the Prevention of Torture.⁵¹ But in the proposed mechanism additional to the right to visit places of detention, possibility of publishing findings to public was considered.⁵²

⁴⁵ Evans, Malcolm, & Haenni-Dale, Claudine. (2004). *Preventing torture the development of the optional protocol to the un convention against torture*. Human Rights Law Review, 4(1). p. 20.

⁴⁶ Lauterpacht, Elihu; Greenwood, Christopher. J. (1980). *International Law Reports*. Vol. 56. Cambridge UP. p. 198. ISBN-13: 978-0521464017.

⁴⁷ Watson Institute. (n.d.). *1970s Response to Torture in Brazil*. Watson Institute for International and Public Affairs. Available at: <https://watson.brown.edu/news/2011/green-details-1970s-response-torture-brazil>

⁴⁸ *United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. (1975). A/RES/3452 (XXX).

⁴⁹ *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. (1975). A/RES/39/46.

⁵⁰ Burgers, J. Herman & Danelius, Hans. (1998) *The United Nations Convention against Torture. A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Martinus Nijhoff Publishers, Dordrecht/ Boston/London. pp. 26–29.

⁵¹ De Beco, Gauthier. (2011). *The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the OPCAT) in Europe: Duplication or Reinforcement?*. Maastricht Journal of European and Comparative Law, 18. pp. 257-274. 10.1177/1023263X1101800303.

⁵² Evans, M. D., & Haenni-Dale, C. (2004). p. 24.

The Swiss Committee against Torture requested a draft Convention Concerning the Treatment of Prisoners Deprived and a group of experts gathered these ideas in one convention in 1977.⁵³ In December same year the United Nations Human Rights Committee (UNHRC) was requested to draft a Convention against Torture by the UN General Assembly. In 1978 two drafts were presented by the International Association of Penal Law (IAPL) and the Swedish Government to the UN Commission. Both drafts were similar, however there were two different models.⁵⁴ One model was the Gautier preventive visiting mechanism and the other was the IAPL and Swedish criminalising approach. It was proposed that the former model, the project of Jean-Jacques Gautier to be recast as an Optional Protocol to a Convention based on the later model by Secretary-General of the International Commission of Jurists Niall McDermot in order to avoid confusion.⁵⁵

A first draft Optional Protocol was submitted to the Commission on Human Rights by Costa Rica in 1980. But it was decided that the draft would not be examined before the adoption of the Convention. It was aimed to not delay the elaboration process of the Convention.⁵⁶ The Costa Rica draft proposal was important in the sense of that the states would agree 'to permit visits... to any place... subject to the jurisdiction of a State Party where persons are held who have been deprived for their liberty for any reason'.⁵⁷

⁵³ Evans, M. D., & Haenni-Dale, C. (2004). p. 20.

⁵⁴ International Association of Penal Law Draft Convention for the Prevention and Suppression of Torture (1979), E/CN.4/NGO/ 213(reproduced in Burgers and Danelius (eds.), supra note 13, Appendix 5, at p. 197) and the Draft International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, submitted by Sweden (1978), E/CN.4/1285 (reproduced in Burgers and Danelius (eds.), supra note 13, Appendix 6, at p. 203).

⁵⁵ Evans, M. D., & Haenni-Dale, C. (2004). p. 20.

⁵⁶ De Beco, Gauthier. (2011). p. 259.

⁵⁷ Draft Optional Protocol to the Draft International Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment of Punishment, submitted by Costa Rica (1980), E/CN.4/ 1409 and Costa Rica Draft Protocol (1980) (reproduced in Burgers and Danelius (eds.), supra note 13, Appendix 8, at 213).

The Optional Protocol remained for more than ten years due to unwillingness of states to give a right to an independent body unrestricted access to places of detention. However, Gautier's idea gained acceptance from the Council of Europe.⁵⁸

A Convention has been elaborated based on the Swiss Committee model at the proposal of the Chairman of the Committee on Legal Affairs, Noël Berrier. The European Convention for the Prevention of Torture and Inhuman or Degrading-Treatment or Punishment (ECPT) was adopted in 1987 and created Committee-for the Prevention of Torture (CPT) to visit places of detention in European states.⁵⁹ Success of the CPT on prevention of torture and other inhuman or degrading treatment or punishment against persons deprived of their liberty lead to elaboration of the OPCAT. Positive effects of the CPT reduced fear of states against visiting mechanism would affect their sovereignty. Then, Costa Rica submitted a new draft Optional Protocol in 1991. The Commission on Human Rights created a working group for an Optional Protocol.⁶⁰ Although adoption of the OPCAT took additional fifteen years, the ECPT and OPCAT served mutually in the process of their elaboration.⁶¹

In 2001, Mexico proposed to oblige states to create national mechanism after the unsuccessful try of creating an independent body. However, Sweden maintained the idea of creating an independent body for visits of places of detention like the CPT, on behalf of the EU group. But national mechanisms were not excluded. Finally, in the last session of the working group the Optional Protocol was submitted and approved by the Commission on Human Rights. On 18 December 2002, the OPCAT was adopted by the UN General Assembly and entered into force on 22 June 2006.⁶²

The OPCAT builds on the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT) and helps states meet their obligations under it. State parties agree to establish a National Preventive Mechanism (NPM) for inspections

⁵⁸Pennegård, AnnMarie. *An Optional Protocol, Based on Prevention and Cooperation* in Duner, Bertil (1998). *An End to Torture. Strategies for its Eradication*. Zed Books, London/New York. pp. 43–44.

⁵⁹ De Beco, Gauthier. (2011). p.260

⁶⁰ Evans, M. D., & Haenni-Dale, C. (2004). pp. 24–25.

⁶¹ De Beco, Gauthier. (2011). p. 260

⁶² Ibid.

of all places of detention and to allow for international inspections by the United Nations Subcommittee on the Prevention of Torture (SPT). The SPT works confidentially with states and protects informers from any retaliation.⁶³

1.3. Composition and structure of the SPT

Initially, the Subcommittee on Prevention consisted of ten members. However, following Switzerland's ratification of the Optional Protocol on September 24, 2009, as the fiftieth state to do so, the number of members on the Committee increased to twenty-five. The authors of the Protocol took into account the workload of the SPT and the number of state visits, determining that the number of members should be increased to twenty-five after the 50th ratification.⁶⁴ The final version of the Protocol reads: "The Subcommittee on Prevention shall be comprised of ten members. Upon the 50th ratification or accession to this Protocol, the number of members of the Subcommittee on Prevention shall increase to 25."⁶⁵

During the initial meeting of the Working Group in 1992, the issue of determining the appropriate number of members was brought up and discussed. Various relevant factors, such as workload, the number of state parties, financial considerations, and the qualifications of the members, were taken into account. During the discussion, some delegations believed that twenty-five members was too many, while others thought otherwise. Some delegates argued that the number of members should not exceed that of the parent body, while others pointed out the example of the CPT, which has one member per state.⁶⁶

⁶³ Australian Human Rights Commission. (29 June 2020). *OPCAT: Optional Protocol to the Convention against Torture*. Retrieved from: <https://humanrights.gov.au/our-work/rights-and-freedoms/projects/opcat-optional-protocol-convention-against-torture>

⁶⁴ Evans, Malcolm. (2022). *The United Nations Convention against Torture and its Optional Protocol: A Commentary*, 2nd edition. Edited by Nowak, Manfred, Birk, Moritz, & Monina, Giuliana. International and Comparative Law Quarterly, 71(1). Oxford University Press, Oxford. doi:10.1017/S0020589321000452. p. 755.

⁶⁵ OPCAT art. 5(1)

⁶⁶ United Nations Commission on Human Rights. (1992). *Report of the Working Group on a Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or*

In the second session of the Working Group in 1993, the group agreed to allow an increase in number of members at a later stage and changed the wording to “After the [number to be inserted] accession to the present Protocol, the number of members of the Subcommittee shall increase to [number to be inserted].”⁶⁷

The original 1980 Costa Rica Draft had already proposed the same mechanism, initially ten members to be increased to eighteen after the twenty-fifth State to become a party to the Protocol. The model was taken from Article 17 of the Convention on the Elimination of All Forms of Discrimination Against Women which started with eighteen experts and was increased to twenty-three after ratification of thirty-five States.⁶⁸

Another model for the size of the SPT was the CPT which consist of a number of experts equal to the number of States parties to the ECPT. Also, it was taken into consideration that the missions shall be conducted by at least two members and each member may carry two missions per year, the SPT could conduct considerable number of missions per year which require many personnel. After Working Group discussions, finally the model of ten to twenty-five members was compromised.⁶⁹

Regarding the composition of the SPT the following controversial issues were considered during discussions: *Professional experience; Equitable geographical distribution; Gender balance; and Independence and impartiality.*

1.3.1. Professional Experience

Composition of the SPT was another important issue during discussions. During the first session of Working Group professional qualification of the candidates in relevant field for the election made a discord. Initially people with administrative experience in prisons and

Punishment. UN Doc E/CN.4/1993/28. Retrieved from:

https://ap.ohchr.org/documents/alldocs.aspx?doc_id=43

⁶⁷ United Nations Commission on Human Rights. (1993). *Report of the Working Group on a Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. UN Doc E/CN.4/1994/25. Retrieved from:

https://ap.ohchr.org/documents/alldocs.aspx?doc_id=43

⁶⁸ Evans, M. (2022). *The United Nations Convention against Torture and its Optional Protocol: A Commentary*. p. 762.

⁶⁹ *Ibid.*

police have not been considered. They included judges, lawyers, or academics and the following qualities were raised for consideration:

- Addition of ‘with recognized competence in the field of human rights’ to the relevant article of the Protocol;
- Experience in investigative work;
- Ability to engage in constructive dialogue;
- Legal or professional experience in prisons.

Need for wide range of qualifications among the members of the Subcommittee has been mentioned by most delegates.⁷⁰

In the second session of the Working Group, with regard to this issue it was agreed that qualification of the membership is too limited and inclusion of the nominees with experience in administrative field was considered, particularly administration of justice and in a wider field of human rights.⁷¹

1.3.2. Equitable geographical distribution

As stated in Article 5(39) of the OPCAT, when forming the Subcommittee, it is important to give careful and thoughtful consideration to two key factors.⁷² Firstly, there should be an equitable geographic distribution of members of the SPT, meaning that members should be drawn from a range of different regions across the world. This is to ensure that the Subcommittee is representative of the global community and can therefore effectively fulfill its mandate.⁷³

Secondly, it is essential to have a diverse representation of different civilizations and legal systems of the States Parties when forming the Subcommittee on Prevention. This implies that the members of the Subcommittee should come from various legal

⁷⁰ UN Doc E/CN.4/1993/28. para. 60.

⁷¹ UN Doc E/CN.4/1994/25. para. 34.

⁷² OPCAT, Art. 5(3)

⁷³ Association for the Prevention of Torture & Inter-American Institute for Human Rights (IIHR). (2010). *Optional Protocol to the UN Convention against Torture Implementation Manual*. p. 58. Retrieved from: <https://www.apt.ch/sites/default/files/publications/opcat-manual-english-revised2010.pdf>

frameworks, religious and cultural practices, and historical backgrounds, to reflect the broad range of cultural and legal traditions of the States Parties. By doing this, the Subcommittee can enhance its understanding and address more effectively the issues related to torture and other forms of ill-treatment, that may arise in various contexts.⁷⁴

Overall, these considerations underscore the importance of ensuring that the Subcommittee on Prevention is a diverse and inclusive body that can draw on a wide range of perspectives and experiences to effectively carry out its role in preventing torture and other forms of ill-treatment.

First ten members of the Subcommittee came from only Europe and Latin America which was not equitable.⁷⁵ As of November 2023, there are seven SPT members belonging to the African region; one expert from the South Asia; thirteen members from Europe; four from the Latin American and Caribbean region.⁷⁶

1.3.3. Gender balance

OPCAT Article 5(4) states that in addition to ensuring equitable geographic distribution and representation of diverse legal and cultural systems when composing the Subcommittee on Prevention, balanced gender representation should also be taken into consideration.⁷⁷ This means that the selection process of the Subcommittee should take into account the principles of equality and non-discrimination in order to ensure that both men and women are fairly represented.

By including balanced gender representation in the composition of the Subcommittee, it can help to address potential gender disparities and inequalities that may arise in the context of torture and ill-treatment. Additionally, this can promote a more inclusive and

⁷⁴ Ibid. p. 58.

⁷⁵ Evans, M. (2022). *The United Nations Convention against Torture and its Optional Protocol: A Commentary*. p.764.

⁷⁶ The Office of the High Commissioner for Human Rights. (n.d.). *Subcommittee on Prevention of Torture: Membership*. Retrieved from: <https://www.ohchr.org/en/treaty-bodies/spt/membership>

⁷⁷ OPCAT. Art. 5(4).

diverse dialogue among the members of the Subcommittee, leading to a better understanding and handling of the complex issues surrounding torture and ill-treatment.⁷⁸

Gender representation in UN bodies is essential for several reasons. First and foremost, it is a matter of human rights and equality. Women make up half of the world's population, and therefore their perspectives, experiences, and needs must be reflected in decision-making processes at the highest level. When women's voices and contributions are excluded from important discussions and decision-making processes, it can lead to policies that do not fully reflect the needs and experiences of women, and can contribute to systemic discrimination and inequality.⁷⁹

Overall, the inclusion of gender-balanced representation in the Subcommittee's composition serves as a reminder of the importance of gender equality in promoting a fair and effective response to the issue of torture and ill-treatment.

As only two of the first ten members were women, this cannot have been regarded as gender balanced.⁸⁰ With the latest elections, however, the SPT consists of fourteen female (56%) and eleven male (44%) experts, which can be seen as a major achievement with regard to gender balance.⁸¹

1.3.4. Independence and impartiality

At the twenty-fourth annual meeting of the Chairs of human rights treaty bodies in June 2012 in Addis Ababa, new guidelines were established, referred to as the "Addis Ababa Guidelines," in order to promote the independence and impartiality of members of the

⁷⁸Evans, Malcolm. (2022). *The United Nations Convention against Torture and its Optional Protocol: A Commentary*.

⁷⁹ The United Nations Entity for Gender Equality and the Empowerment of Women. (2016). *Status of Women in the United Nations System*. pp. 8-10.
<https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2016/Status-of-women-in-the-United-Nations-system-2016-en.pdf>

⁸⁰ Evans, Malcolm. (2022). *The United Nations Convention against Torture and its Optional Protocol: A Commentary*. p. 764

⁸¹ OHCHR. (n.d.). Subcommittee on Prevention of Torture: Membership.

treaty bodies.⁸² These Guidelines establish basic principles so that members are not perceived to have conflicts of interest due to factors such as race, ethnicity, religion, gender, disability, color, descent, or any other form of discrimination.⁸³ It was stressed that members should not be removed during their terms and should not be subject to influence or receive instructions from any external sources with regards to their duties and responsibilities. This helps to ensure the independence of the members and their ability to fulfill their duties without interference.⁸⁴ Furthermore, members are advised to avoid taking any action that could place a state in a more favorable or less favorable position compared to others. This helps to ensure that the human rights treaty bodies remain impartial and equitable in their dealings with different states.⁸⁵

The fact is that some of the SPT experts are also the member of the NPM of their States which makes independence issue problematic. On the other hand, some experts hold Government positions, and it makes the situation even more complicated.⁸⁶

1.4. The SPT country visits

The SPT has three main functions according to the OPCAT. Article 11 defines its core preventive mandate as follows:

- Operational function;
- Advisory function;
- Cooperation with external actors.⁸⁷

⁸² United Nations Secretary General. (25-29 June 2012). Transmits report of the Chairs of the Human Rights Treaty Bodies: Implementation of human rights instruments. *A/67/222* Retrieved from: https://academy.ishr.ch/upload/resources_and_tools/TB%20Chairs%20Addis%20Ababa%20Guidelines_en.pdf [accessed 6 February 2023]

⁸³ The Office of the High Commissioner for Human Rights. (2 June 2012). Guidelines on the independence and impartiality of members of the human rights treaty bodies. Annex I, para. 3.

⁸⁴ Ibid. Annex I, para. 5.

⁸⁵ Ibid. Annex I, para. 7.

⁸⁶ Murray, Rachel; Steinerte, Elina; Evans, Malcolm; & Hallo de Wolf, Antenor. (2011). *The Optional Protocol to the UN Convention against Torture*. Oxford University Press. ISBN-13: 978-0199602193. pp. 94–95.

⁸⁷ OPCAT. Art. 11.

Initially, in the Costa Rica Draft operational function of the SPT which centers on monitoring of places of detention in States Parties to the OPCAT was introduced, advisory function was introduced later by the Mexican Draft in 2001. According to the Costa Rica Draft, the SPT's main function was to undertake and carry out regular and ad hoc missions to State Parties. The Mexican draft focuses more on the functions of advice, cooperation, and assistance.⁸⁸

The OPCAT sets several articles on the operational function of the SPT. The SPT is granted access to all detention facilities under the jurisdiction and control of States Parties under Article 4 of the OPCAT.⁸⁹ The responsibilities of the SPT are outlined in Article 11(a), which calls for them to visit places of detention and make recommendations to States Parties regarding the protection of those who are detained from torture and other ill-treatment.⁹⁰

States Parties are obligated under Articles 4(1), 12(a), and 12(b) to receive the SPT, permit access to all detention facilities, and supply the SPT with all necessary information so that it can carry out its duties.⁹¹

Missions can be divided into three phases: before the visit; during the visit; and after the visit.

1.4.1. Before the visit

The first State Parties to visit were selected by lot accordingly to the Article 13 of the Protocol.⁹² Those countries were Mauritius, the Maldives, and Sweden. Later the SPT agreed on some criteria for the selection of countries to visit. The following factors were agreed to be taken into consideration:

- Date of ratification;
- Geographic distribution;

⁸⁸ Costa Rica Draft Protocol (1980) (reproduced in Burgers and Danelius (eds.), supra note 13, Appendix 8, at 213).

⁸⁹ OPCAT. Art 4.

⁹⁰ OPCAT. Art. 11(a).

⁹¹ OPCAT. Arts. 4(1), 12(a), and 12(b).

⁹² OPCAT. Art. 13.

- Size of the State;
- Complexity of the State;
- Urgent issues⁹³

The initial step of the program of in-country visits is the choice of countries. Names of the chosen countries for visits are announced on the website of the OHCHR during the last session of each year. However, date of the visits remains confidential and unknown.⁹⁴ They conducted a total of 11 visits in its first four years. those countries were Benin Bolivia Cambodia Honduras Lebanon Liberia Maldives Mauritius Mexico Paraguay and Sweden.⁹⁵ The number of countries raised concerns about the ability of the SPT. The problem was the budget of the body. It was expected to have some developments in this issue after the increase of number of members (from 10 to 25) in 2011.⁹⁶

The SPT unlike other UN bodies and mechanisms does not require formal invitation or prior consent from the State Party before entry. Even the CAT and UN Special Rapporteur on Torture require a formal invitation from the State Party to enter the country. However, the SPT must notify the State “without delay” according to the Article 13(a) of the Protocol.⁹⁷

For the preparation of in-country visits the SPT meets with the Permanent Missions of the States Parties in Geneva and notifies the State Party about the dates of the mission. But it does not reveal which places of detention will be visited. The SPT also provides the State

⁹³ Committee against Torture. (25 March 2010). *Third annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (April 2009 to March 2010). CAT/C/44/2. Retrieved from: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en&TreatyID=12&DocTypeID=27

⁹⁴ OHCHR. (n.d.). Visits. <https://www.ohchr.org/en/treaty-bodies/spt/visits>

⁹⁵ OHCHR. (n.d.). Visits. <https://www.ohchr.org/en/treaty-bodies/spt/visits>

⁹⁶ Third Annual Report of the SPT. para. 21.

⁹⁷ Optional Protocol to the UN Convention against Torture Implementation Manual. p. 151.

with composition of the delegation and external experts who will be involved in written document. It is also useful for entry procedure of the personnel i.e., issuing visas.⁹⁸

The article 13 of the Protocol outlines the composition of the human rights missions. It requires that a mission should be conducted by at least two members, with the option of involving additional experts if necessary. The Subcommittee on Prevention of Torture (SPT) recommends that missions should include more than two members, with a minimum of two experts and two members from the SPT Secretariat. However, the number of members and experts involved may vary depending on the situation and complexity of the visiting party, with delegations having comprised between two to six members, and two to four members from the Office of the United Nations High Commissioner for Human Rights (OHCHR).⁹⁹ Despite this recommendation, the Third Annual Report of the SPT states that due to budgetary restrictions, it was not possible for delegations to be accompanied by independent experts in the countries visited after 2007. This highlights the need for sufficient funding to support the human rights missions and ensure their effectiveness.¹⁰⁰

Gathering information prior to conducting an in-country mission is of utmost importance. The goal of this step is to thoroughly assess the conditions of places of detention, so that the mission can be planned and executed effectively. The Subcommittee has various sources of information at its disposal. Over the years, the SPT has discovered that input from national, regional, and international actors can greatly enhance the success of its missions.¹⁰¹ The recommendations and reports of UN treaty bodies dealing with issues surrounding deprivation of liberty, such as the Committee Against Torture (CAT), the Human Rights Committee, and the Committee on the Rights of the Child, are regularly

⁹⁸ Committee against Torture. (14 May 2008). *First annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (February 2007 to March 2008). CAT/C/40/2. Annex V. Retrieved from: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en&TreatyID=12&DocTypeID=27

⁹⁹ First Annual Report of the SPT. para. 51.

¹⁰⁰ Third Annual Report of the SPT. para. 34.

¹⁰¹ Third Annual Report of the SPT. para. 33; and Second Annual Report of the SPT.

relied upon by the SPT in its in-country visit reports.¹⁰² As an illustration, in November 2006, the UN Special Rapporteur on Torture made an inspection visit to Paraguay and submitted a report with recommendations.¹⁰³ The SPT carried out its own in-country mission to Paraguay in 2009, and in its subsequent report, incorporated the suggestions made by the Special Rapporteur. By using this approach, the SPT is able to build a more comprehensive picture of the situation and make more informed recommendations.¹⁰⁴

The SPT communicates with NPTs of the selected country during in-country visits. This action aligns with the cooperative ethos of the OPCAT, specifically Articles 11(b)(ii), 12(c), and 20(f), which dictate that these interactions must be kept confidential and without interference from the State Party.¹⁰⁵ The SPT gathers information through various means, which is then compiled into a comprehensive "country brief" to guide their visit. This brief includes details about specific places to visit, individuals to speak with, and information about the State's legal, political, and socio-economic status.¹⁰⁶

1.4.2. During the visit

The SPT conducts a conference with relevant authorities and representatives from NPMs and other monitoring organizations to gather up-to-date information on detention conditions. During the meeting, the SPT also explains its working methods. The information obtained is crucial for the SPT for the following reasons:

- To assess the overall threat of torture in the country.

¹⁰² Committee against Torture. (7 April 2009). *Second annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (February 2008 to March 2009). CAT/C/42/2. para. 50. Retrieved from: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en&TreatyID=12&DocTypeID=27

¹⁰³ UN Human Rights Council. (1 October 2007). *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Manfred Nowak : addendum: mission to Paraguay. A/HRC/7/3/Add.3. Available at: <https://www.refworld.org/docid/47343fc92.html>

¹⁰⁴ Report on the visit to Paraguay. para. 3.

¹⁰⁵ Optional Protocol to the UN Convention against Torture Implementation Manual. p. 155.

¹⁰⁶ Optional Protocol to the UN Convention against Torture Implementation Manual. p. 156.

- To provide advice and recommendations to the NPMs.
- To identify the facilities to be inspected during their visit. ¹⁰⁷

At the end of their visit, the SPT holds a final meeting with senior officials to review their findings and present recommendations. The meeting is interactive, allowing officials to provide immediate feedback. ¹⁰⁸

One of the most important concerns during SPT missions is gaining access to detention facilities. This is a frequent obstacle that negatively impacts the efficiency of their work. The matter will be examined in further detail in subsequent chapters. According to Article 14(1)(c) of the Optional Protocol, the SPT has unrestricted access to all places of detention¹⁰⁹, and as specified in Article 4, visits can be conducted without prior notice and at any time. ¹¹⁰ The SPT is granted access to a broad spectrum of detention facilities, including any place under the jurisdiction and control of a public authority where individuals are or may be deprived of their freedom, whether through an order issued by the authority, at its instigation, with its consent, or through its passive acceptance. ¹¹¹

Private interviews are the most important part of visits. It gives information from detainee's point of view regarding treatment in prisons, conditions of the detention places, and administration. Interviews enable the SPT to get an accurate picture of the condition.¹¹² Location of the interview is chosen by the SPT delegation carefully. During the interview no pressure or force can be used towards the interviewee. After the interview reprisal is an important issue. In its third annual report the SPT states the following statement regarding the risk of reprisals: "Persons deprived of their liberty with whom the Subcommittee delegation has spoken may be threatened if they do not reveal the content of these interviews or punished for having spoken with the delegation. In addition, the Subcommittee has been made aware that some persons deprived of their

¹⁰⁷ First Annual Report of the SPT. Annex E.

¹⁰⁸ Optional Protocol to the UN Convention against Torture Implementation Manual. p. 157

¹⁰⁹ The OPCAT. Art. 14(1)(c).

¹¹⁰ The OPCAT. Art 4.

¹¹¹ The OPCAT. Art. 4(1).

¹¹² Third Annual Report of the SPT. para. 26.

liberty may have been warned in advance not to say anything to the Subcommittee delegation.”¹¹³

1.4.3. After the visit

In the end of the in-country visit there are two steps: factual press release and country report. Factual press release is different than the report. It does not indicate any information about the situation of deprivation of liberty. It instead informs that the visit finished and mentions the composition of the delegation, meetings held with different actors such as NPMs and NGOs, and detention places visited.¹¹⁴

Visit Report, on the other hand, is confidential and cannot be shared with some exemptions. Visit report indicated the findings and recommendations of the delegation. It is broad and covers large range of issues.¹¹⁵ State parties have obligation “to examine the recommendations of the SPT and enter into dialogue with it on possible implementation measures”¹¹⁶. When the report is ready, it is sent to the State Party on confidential basis. State Parties give responses to the report and in the final report the SPT may include the responses from the state. Once the report finalized it is sent to the State Party on confidential basis. The Report may be published in some conditions. Firstly, if the State itself agrees to make it public. In practice, public reports increased in recent years. In 2010, only five of the reports were public.¹¹⁷ Second condition is when the State publishes the report partly, the SPT can publish it partly or fully.¹¹⁸ Third, the SPT may publish the Report without consent of the State as a sanction for lack of cooperation.¹¹⁹

¹¹³ Third Annual Report of the SPT. para. 35.

¹¹⁴ Optional Protocol to the UN Convention against Torture Implementation Manual. p. 161-162.

¹¹⁵ Ibid. p. 163.

¹¹⁶ The OPCAT. Art 12(d).

¹¹⁷ Optional Protocol to the UN Convention against Torture Implementation Manual. p. 164.

¹¹⁸ The OPCAT. Art. 16(2).

¹¹⁹ The OPCAT. Art. 16(4).

1.5. Advisory function of the SPT

Advisory role of the SPT wide range of different but interlinked activities such as advising a cooperating with NPMs, State Parties, the CAT and other regional and international bodies. Center of advising is interpretations of the Optional Protocol and guidance on torture-related issues. The main instrument of the SPT's advisory function is annual report, because it is one of the few documents published. The SPT seize this opportunity and does not only describe its activities, but also use it as an interpretation tool of the OPCAT and other torture related documents, information on its methodology and working principles, and advise for the implementation of the Protocol.¹²⁰ Currently, there are fifteen annual reports and they include different kind of topics related.¹²¹ For example, the second annual report analyses the Istanbul Protocol as a tool of torture prevention¹²² or the fifteenth annual report mentions advices related to the coronavirus disease (COVID-19) pandemic to States and NPMs.¹²³

In its visit reports the SPT has analyzed three levels of thematic analysis:

- Legal framework, regulation, and rules of the State Parties;
- Institutional framework;
- other practices which may lead to torture and other forms of ill-treatment.¹²⁴

The SPT can give advice to different kind of actors, NPMs, State Parties, and other related bodies. The most notable cooperation is between NPMs and the SPT. Because it is strengthening national preventative mechanisms against torture which is the main purpose

¹²⁰ Optional Protocol to the UN Convention against Torture Implementation Manual. p. 141

¹²¹ UN Treaty Database. Available at:

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en&TreatyID=12&DocTypeID=27

¹²² Second Annual Report of the SPT. Annex VII.

¹²³ Committee against Torture. (10 March 2022). Fifteenth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. CAT/C/73/2. para. 5. Retrieved from:

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en&TreatyID=12&DocTypeID=27

¹²⁴ Second Annual Report of the SPT. para. 12.

of the Optional Protocol.¹²⁵ The SPT's role regarding NPMs can be analyzed in four dimensions:

- Advice to State Parties on establishment and designation of NPMs;¹²⁶
- Advice to State Parties on NPM's capacities and mandate;¹²⁷
- Advice to NPMs on their functioning and own capacity building;¹²⁸
- Advice to NPMs on strengthening the protection of detainees.¹²⁹

It is worth to get into details about these dimensions.

a. Advice to State Parties on establishment and designation of NPMs

The SPT can provide advice to State Parties and NPMs themselves on designation and establishment of the later during in-country visits and follow-up visits. Generally, discusses these issues in presence with relevant actors and high-level authorities.¹³⁰ It is important to note that the advice does not have to be linked to the in-country mission directly. Because the SPT's ability to conduct in-country missions has several restrictions as a result of resource restrictions. In other case, these restrictions would defeat the aim of the preventive system of the OPCAT.¹³¹

Under the Part IV of the Protocol there are requirements for NPMs and the guidance on NPM designation and establishment in annual reports assist them. The guidelines serve to three purposes:

- To facilitate process of creating independent and effective NPMs;
- To assist national actors in the process of designating NPMs;
- To help NPMs during the establishment phase.¹³²

¹²⁵ Optional Protocol to the UN Convention against Torture Implementation Manual. p. 145

¹²⁶ OPCAT. Art. 11(b)(i).

¹²⁷ OPCAT. Art. 11(b)(iv).

¹²⁸ OPCAT. Art. 11(b)(ii).

¹²⁹ OPCAT. Art. 11(b)(iii).

¹³⁰ Subcommittee on Prevention of Torture. (2010). Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Republic of Paraguay. CAT/OP/PRY/1. paras.56-58.

¹³¹ Optional Protocol to the UN Convention against Torture Implementation Manual. p. 144.

¹³² Subcommittee on Prevention of Torture. Preliminary guidelines for the on-going development of NPMs, First annual report. para. 28.

b. Advice on functioning of NPMs

The advice on the functioning of NPMs benefits both State Parties and NPMs themselves. The recommendations regarding NPM operation are not limited to those State Parties that receive an in-country visit from the SPT.¹³³ The Subcommittee collects information to provide specific and practical advice on NPM functioning. To facilitate the gathering of relevant information, the OPCAT includes Article 12(b), 14(1)(a), and 14(1)(b), which allows the SPT to request information from both State Parties and NPMs. Additionally, the SPT can also obtain information from other sources such as National Human Rights Institutions (NHRIs), civil society organizations, international and regional mechanisms, and other monitoring bodies.¹³⁴ The SPT gathers the following information about NPMs:

- Legislation and mandates;
- Composition and internal organization;
- Working methods and activities;
- Relationship with other actors;
- Resources.¹³⁵

The OPCAT put specific obligations on States regarding NPMs. States Parties acquire specific obligations regarding NPMs upon ratification of the OPCAT, including in relation to:

- To provide NPMs with the necessary powers and guarantees, and human, financial and logistical resources;¹³⁶
- To examine NPM's recommendations;¹³⁷
- To establish a cooperative dialogue with NPM;¹³⁸
- To publish NPM's annual report.¹³⁹

¹³³ Optional Protocol to the UN Convention against Torture Implementation Manual. p. 146

¹³⁴ Ibid.

¹³⁵ Third Annual Report of the SPT. para. 39.

¹³⁶ OPCAT. Articles 18-21.

¹³⁷ OPCAT. Art. 22.

¹³⁸ Ibid.

¹³⁹ OPCAT. Art. 23.

States are responsible for failure to implement even one of these obligations which may have a direct impact on NPM functioning.

Advice to NPMs

The SPT also have mandate to advise NPMs directly. Advice may be on their operational capacities or functioning. It helps NPMs to identify measures for strengthening the protection of detainees.¹⁴⁰ Therefore, NPMs and the SPT should get in direct contact, but also secure their independence. Direct contract between them are often established through bilateral meetings during in-country visits.¹⁴¹ In reports on visits to different countries we can observe it.¹⁴² This is the result of lack of specific budget for engagement with NPMs. However, there are several options:

- Attending SPT sessions in Geneva;
- Participating in on-site visits;
- Taking part in regional gatherings of NPMs (for example, the European NPM Project of the Council of Europe (2010-2011));¹⁴³ and
- Written communication.¹⁴⁴

The Subcommittee can also offer advice to NPMs indirectly by reviewing their reports and giving general guidance or specific recommendations.¹⁴⁵

¹⁴⁰ OPCAT. Arts. 11(b)(ii) and 11(b)(iii).

¹⁴¹ Nowak, Manfred and McArthur, Elizabeth. (2008). *The United Nations Convention Against Torture: A Commentary*. Oxford Commentaries on International Law. Doi: 10.1093/law/9780199280001.001.0001. p. 997.

¹⁴² Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Sweden. (2008); Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Maldives. (2009); and Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico. (2010).

Retrieved from: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/CountryVisits.aspx

¹⁴³ SEE NPM. The European NPM Project of the Council of Europe. Retrieved from: <https://www.see-npm.net/>

¹⁴⁴ Optional Protocol to the UN Convention against Torture Implementation Manual. p.149.

¹⁴⁵ Ibid.

Chapter 2

2.1. Challenges to the work of the SPT

The SPT faces many obstacles regarding different issues which weakening its work and effectiveness. Although it has access to all places of detention, it faces difficulties such as lack of human and financial resources, lack of access to extraterritorial detention centers, and obstacles imposed by state authorities. On the other hand, it has been proven that principle of confidentiality also challenging work of the SPT.

The OPCAT established the SPT as an independent international body that monitors and visits places of detention to prevent torture and ill-treatment. Despite its important mandate, the SPT faces several challenges in carrying out its work, including:

- Lack of access: Some countries deny the SPT access to places of detention or impose restrictions that undermine its ability to carry out effective monitoring.¹⁴⁶
- Limited resources: The SPT's work is dependent on the financial and human resources made available to it, which can limit the number and frequency of visits it can undertake.¹⁴⁷
- Resistance and reprisals: Some authorities may not be willing to cooperate with the SPT or may subject persons who have cooperated with the SPT to reprisals.¹⁴⁸
- Diverse legal and institutional frameworks: The legal and institutional frameworks governing detention can vary significantly between countries, making it difficult for the SPT to develop a uniform approach to monitoring.¹⁴⁹

¹⁴⁶ Evans, Malcolm. (2020). *Statement Delivered at the 75th Session of the General Assembly*. Third Committee. Item 69 (a). Retrieved from: https://www.globaldetentionproject.org/wp-content/uploads/2020/11/Statement_OPCAT_GA75.pdf

¹⁴⁷ Ibid.

¹⁴⁸ Murray, Rachel. (2008). *National Preventive Mechanisms under the Optional Protocol to the Torture Convention: One Size Does Not Fit All*. *Netherlands Quarterly of Human Rights* 26(4). pp. 498-499.

¹⁴⁹ Asia Pacific Forum of National Human Rights Institutions, Association for the Prevention of Torture, and OHCHR. (2010). *Preventing Torture: An Operational Guide for National Human Rights Institutions*. pp. 30-31.

- Coordination and cooperation: The SPT needs to coordinate and cooperate with other relevant actors, such as national human rights institutions, to enhance its effectiveness.¹⁵⁰
- Political pressure: The SPT's work can be sensitive and politically charged, and some states may seek to undermine or challenge the legitimacy of its findings and recommendations.¹⁵¹

Overall, the SPT's ability to carry out its important mandate is dependent on overcoming these challenges and maintaining the support and cooperation of states parties to the OPCAT.

2.2. Lack of Resources

Torture prevention requires immediate action and cannot be delayed. For this reason, it is unfortunate that it takes time for the SPT to held follow-up to visits because of lack of human and financial resources. Sometimes it can take one year or more to finalize reports of a given state. On the other hand, it cannot take advantage of additional meeting. In other words, lack of resources prevents the SPT to exercise its mandate effectively and weakens its advising function. For example, in 2018, the SPT could only complete six visits out of planned eight visits due to reduced levels of staff resourcing available.¹⁵²

¹⁵⁰ Steinerte, Elina. (2014). *The Jewel in the Crown and its Three Guardians: Independence of National Preventive Mechanisms under the Optional Protocol to the UN Torture Convention*. Human Rights Law Review 14(1). pp.15-16. Retrieved from: <https://doi.org/10.1093/hrlr/ngt042>

¹⁵¹ Therese Rytter, Andrew M. Jefferson & Lise Worm & Rehabilitation and Research Centre for Torture Victims. (2005, March). *Preventing torture in places of detention through systems of regular visits concept paper*. Retrieved from: <https://www.ft.dk/samling/20042/almdele/uru/bilag/106/174393.pdf>.

¹⁵² Committee against Torture. (13 March 2019). *Twelfth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. CAT/C/66/2. para. 35.

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https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en&TreatyID=12&DocTypeID=27

This prevents the SPT to reach its original aim which was to held visits as the same duration of an average reporting cycle in other human rights bodies.¹⁵³

Taking increasing number of State Parties into consideration, the SPT's work is becoming more difficult with limited staff and budget. It has direct effect on the nature of the Optional Protocol. The SPT can carry out maximum of twelve visits a year with currently available staff.¹⁵⁴ Even if it succeeds, a State Party could only be visited in nine years as there are 90 member states currently.¹⁵⁵

The SPT needs more human resources in its working groups, on the other hand. Working groups were established to increase effectiveness of the SPT, also in Regional Teams. For this, it needs to have a broader and interdisciplinary team which consist of at least on permanent staff member from each State Party in the Secretariat to work not only during the visits but also a whole year.¹⁵⁶

On the other hand, budget of the SPT is very limited. From October 2019 to spring 2020 the Subcommittee could not carry out any in-country visit due to financial issues. This is violation of Article 25 of the OPCAT according to Malcolm Evans. The solution is easier

¹⁵³ Evans, Malcolm. (2016). *Statement Delivered at the 71st Session of the General Assembly*. Third Committee Item # 69 (a). Retrieved from:

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20741&LangID=E>

¹⁵⁴ Committee against Torture. (10 March 2022). *Fifteenth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. CAT/C/73/2. Para. 4 (a). Retrieved from:

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en&TreatyID=12&DocTypeID=27

¹⁵⁵ González Pinto, Lorena. (February 2022). *The United Nations Subcommittee on Prevention of Torture: The Effects of Preventive Action*. *Journal of Human Rights Practice*, Volume 14, Issue 1. pp. 140-141.

<https://doi.org/10.1093/jhuman/huac018>.

¹⁵⁶ Ibid.

than it looks. Allocation of appropriate support by the General Assembly, the UN Office, and OHCHR can solve it.¹⁵⁷

2.3. The Principle of Confidentiality

The principle of confidentiality refers to the ethical and legal obligation to protect sensitive and private information shared by an individual or organization, and to ensure that this information is not disclosed to unauthorized parties without the explicit consent of the person(s) involved. Confidentiality is a fundamental principle in many professional fields, including healthcare, law, and journalism, among others.¹⁵⁸

The principle of confidentiality recognizes that individuals and organizations may need to share sensitive information with professionals or authorities in certain circumstances, such as to receive medical treatment, legal advice, or other support services. However, it is important that this information is only disclosed to authorized individuals, and that appropriate measures are taken to protect the privacy and confidentiality of the individual(s) involved.¹⁵⁹

Some critics claim that principle of confidentiality is an obstacle for application of recommendations and reports of the SPT by State Parties. They state that State Parties do not risk having an obligation to justify their act of violations of the Optional Protocol.¹⁶⁰ Confidentiality is one of the five principles of the OPCAT along with principles of impartiality, non-selectivity, universality, and objectivity.¹⁶¹ The SPT has an obligation to communicate their recommendations and reports confidentially with some exceptions.¹⁶² Practice shows that these critics are not accurate. Majority of State Parties agree to

¹⁵⁷ Evans, Malcolm. (2020). Statement Delivered at the 75th Session of the General Assembly. Third Committee.

¹⁵⁸ Lesser, Harry, & Pickup, Zelda. (1990). *Law, Ethics, and Confidentiality*. *Journal of Law and Society*, 17(1). pp. 17–28. Available at: <https://doi.org/10.2307/1409952>

¹⁵⁹ McConnell, Terrance. (1994). *Confidentiality and the Law*. *Journal of Medical Ethics*, 20(1). pp. 47–49. Available at: <http://www.jstor.org/stable/27717373>

¹⁶⁰ Pegram, Thomas. (2015). *Governing Relationships: The New Architecture in Global Human Rights Governance*. *Millennium: Journal of International Studies* 43(2): 618–39.

¹⁶¹ The OPCAT. Art. 2(3).

¹⁶² The OPCAT. Arts. 16(1) and 16(2).

publish the SPT reports and benefit from them.¹⁶³ The SPT transmitted 96 visit reports by the end of 2021 and total 63 of reports had been made public by request of State Parties and NPMs. Number of public reports are increasing each year.¹⁶⁴ Even some states allow the Subcommittee to make every state report public. Ukraine is one of those states.¹⁶⁵

2.4. Access to extraterritorial detention centers

One of the most challenging issues for the Subcommittee is access to immigration detention centers. Recently, millions of people are forced to migrate and the situation is getting worse by criminalization of irregular migration and to detain asylum seekers. Irregular migrants became more vulnerable to torture and other cruel, inhuman, or degrading treatment or punishment in latest years.¹⁶⁶

Under international law, states have the authority to manage entry of aliens to their territory. However, their policy on immigration must be accordingly to international standards. They are obliged to prevent acts of torture. The challenge is prevention of torture in extra territorial detention centers which are situated out of the territory of states. The SPT and NPMs face with obstacles to access extra territorial places of detentions.¹⁶⁷ Under the CAT and OPCAT, states have positive obligations to make extra territorial detention centers accessible for the SPT and NPMs in order to make their work more effective.¹⁶⁸

Australia is a great example for this issue. Non-citizens who illegally enter into the territory of Australia are being removed to detention centers which are situated in Papua New Guinea and Nauru under its immigration policy.¹⁶⁹ The problem here is that whether

¹⁶³ Evans, Malcolm. (2016). Statement Delivered at the 75th Session of the General Assembly.

¹⁶⁴ Fifteenth Annual Report of the Subcommittee. (2021). paras. 17 and 18.

¹⁶⁵ Twelfth Annual Report of the Subcommittee. (2019). para. 47.

¹⁶⁶ UN General Assembly. (2017). *Report of the Human Rights Council*. Thirty-sixth session (11-29 September 2017). A/72/53/Add.1. para. 30. Available at: <https://www.refworld.org/docid/5a1d5b844.html>.

¹⁶⁷ González Pinto, Lorena. (February 2022). *The United Nations Subcommittee on Prevention of Torture: The Effects of Preventive Action*. pp. 141-142.

¹⁶⁸ The OPCAT. Art. 4.

¹⁶⁹ Gleeson, Madeline. (2019). *Monitoring Places of Immigration Detention in Australia under OPCAT*. Australian Journal of Human Rights 25(1): 150–69.

the OPCAT can be applied extraterritorially. The question has been answered in the case of Australia which will be discussed more generally in later chapters. The centers are under the Australia's authority and 'the jurisdiction of the state extends to all those places over which it exercises effective control' according to the SPT.¹⁷⁰ Therefore, the SPT needs to visit extraterritorial detention centers as other detention centers based in Australia.¹⁷¹ The Subcommittee even gave a guidance on this situation in Ninth annual report as follows: "Should a State party to the OPCAT (a sending State) enter into an arrangement under which those detained by that State are to be held in facilities located in a third State (a receiving State), the SPT considers that the sending State should ensure that such an agreement provides for its NPM to have the legal and practical capacity to visit those detainees in accordance with the provisions of the OPCAT and the SPT guidelines on NPMs."¹⁷²

For this reason, State Parties should give access to visit extraterritorial detention center to the SPT and NPMs.

2.5. Lack of access to institutions

State Parties acknowledge that the SPT will have access to all places of detention in their territory when ratifying the Optional Protocol. Most of the states are willing to take the Subcommittee seriously and comply with its recommendations. However, there are some states that make it difficult for the Subcommittee to access all detention places and comply with the recommendations only partially. State authorities impose obstacles to

¹⁷⁰ Committee against Torture. (20 March 2014). Seventh annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. CAT/C/52/2. para. 24.

Retrieved from:

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en&TreatyID=12&DocTypeID=27

¹⁷¹ Gleeson, Madeline. (2019). *Monitoring Places of Immigration Detention in Australia under OPCAT*. pp. 153–154.

¹⁷² Committee against Torture. (22 April 2016). *Ninth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (b)*. CAT/C/57/4. para. 26.

Retrieved from:

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en&TreatyID=12&DocTypeID=27.

work of the SPT and do not cooperate in different ways, such as restricting access to places of detention, prohibiting interviews with people who deprived of their liberty kept, and partly or not providing the SPT with relevant information. In this paragraph we will dive into the case of preventing access to institutions.¹⁷³

The Subcommittee on the Prevention of Torture is facing an increasing number of challenges during its visits as mandated by the Optional Protocol. This includes restrictions on the dates and scope of visits. It is important to emphasize that unannounced visits at the discretion of the Subcommittee are a crucial aspect of preventing torture. States that ratified the Optional Protocol have committed to allowing the Subcommittee to determine the time and place of its visits. Any attempt by states to restrict or dictate the visits is seen as an infringement of their obligation to cooperate with the Subcommittee. The Subcommittee views such interference with suspicion and will not accept it as legitimate.¹⁷⁴

Azerbaijan, Ukraine, and Rwanda are very good examples of the kind of countries which make it difficult to cooperate and impose obstacles to access to places of detention. The STP suspended its visit to Azerbaijan in 2014¹⁷⁵, to Ukraine in 2016¹⁷⁶, and to Rwanda in

¹⁷³ González Pinto, Lorena. (February 2022). *The United Nations Subcommittee on Prevention of Torture: The Effects of Preventive Action*. p. 141.

¹⁷⁴ Committee against Torture. (13 March 2019). *Twelfth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. CAT/C/66/2. para. 37.

¹⁷⁵ The Office of the United Nations High Commissioner for Human Rights. (17 September 2014). *Prevention of Torture: UN human rights body suspends Azerbaijan visit citing official obstruction* [Press Release]. <https://www.ohchr.org/en/press-releases/2014/09/prevention-torture-un-human-rights-body-suspends-azerbaijan-visit-citing>

¹⁷⁶ The Office of the United Nations High Commissioner for Human Rights. (25 May 2016). *UN torture prevention body suspends Ukraine visit citing obstruction* [Press Release] <https://www.ohchr.org/en/press-releases/2016/05/un-torture-prevention-body-suspends-ukraine-visit-citing-obstruction>

2017¹⁷⁷ regarding lack of access to places to visit. In case of the first two states the SPT could continue its visit after they addressed the problems.¹⁷⁸

The first SPT visit to Azerbaijan was planned to be held from 8 to 17 September in 2014. However, the Subcommittee suspended its visit on 14 September 2014 due to restrictions imposed to access to places of deprivation of liberty by Azerbaijan authorities. Some members of the SPT delegation remained in Baku to seek further cooperation with the authorities while most of them stopped the visit and left.¹⁷⁹ Next year, the Subcommittee could finally organize another visit to the state from 16 to 24 April and completed its visit successfully. During the visit no obstacles were imposed, and the authorities cooperated with the SPT in interviewing process and access to places to visit.¹⁸⁰ The situation happened in Ukraine in the same way and the Ukrainian authorities cooperated in the next visit. Even it agreed to publish country visit report.¹⁸¹ Unfortunately, in case of Rwanda no further cooperation was observed. The SPT suspended its visit on 20 October 2017 in the fifth day of the visit due to several obstacles imposed by authorities including lack of access to some prison facilities, the non-confidentiality of some interviews, and worries that some interviewees would face reprisal aftermath.¹⁸²

¹⁷⁷ The Office of the United Nations High Commissioner for Human Rights. (20 October 2017). *Prevention of Torture: UN human rights body suspends Rwanda visit citing obstructions* [Press Release] <https://www.ohchr.org/en/press-releases/2017/10/prevention-torture-un-human-rights-body-suspends-rwanda-visit-citing>

¹⁷⁸ Committee against Torture. (13 March 2019). *Twelfth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. CAT/C/66/2. para. 38

¹⁷⁹ The Office of the United Nations High Commissioner for Human Rights. (17 September 2014). *Prevention of Torture: UN human rights body suspends Azerbaijan visit citing official obstruction*.

¹⁸⁰ The Office of the United Nations High Commissioner for Human Rights. (24 April 2015). *Azerbaijan visit: UN torture prevention body welcomes unhindered access, urges more safeguards* [Press Release] <https://www.ohchr.org/en/press-releases/2015/04/azerbaijan-visit-un-torture-prevention-body-welcomes-unhindered-access-urges?LangID=E&NewsID=15886>

¹⁸¹ UN Office of the High Commissioner for Human Rights (OHCHR). (9 December 2016). *Report on the human rights situation in Ukraine 16 August to 15 November 2016*. Retrieved from: <https://www.refworld.org/docid/584ab7d34.html> [accessed 28 January 2023]

¹⁸² The Office of the United Nations High Commissioner for Human Rights. (20 October 2017). *Prevention of Torture: UN human rights body suspends Rwanda visit citing obstructions* [Press Release]

There is a mechanism regarding situations when a State Party does not cooperate in Article 16(4) of the Optional Protocol. According to this article, if a State Party does not cooperate, the SPT may publish the visit report even if the State does not consent.¹⁸³ This is a very powerful tool which has not yet been used but should be used frequently.¹⁸⁴

As 2023, there have been in-country visits to 66 States and four of them suspended due to lack of cooperation (Azerbaijan, Ukraine, Rwanda, Australia), one of them due to administrative reasons (State of Palestine).¹⁸⁵ These statistics shows that countries are more likely to cooperate. However, it is important to note that countries which do not cooperate need more assistance from the SPT in order to make the situation better. This factor reduces effectiveness of work of the SPT. For example, recently Australia in-country visit was suspended because of lack of cooperation. According to Amnesty International, around 1,200 refugees, including men, women, and children, who applied for asylum in Australia and were transferred to the Pacific Island nation of Nauru are reportedly suffering from horrific abuse, brutal treatment, and neglect. These groups contend that the Australian government is deliberately ignoring these abuses in order to discourage more asylum seekers from traveling to Australia by boat. The majority of the refugees and asylum seekers on Nauru have been detained there for three years, and they endure routine, unpunished assaults from native Nauruans in addition to neglect on the part of Australian government-hired healthcare professionals and other service providers. They also endure needless delays in getting medical care, even for ailments that are life-threatening, and many of them suffer from severe mental health issues and crushing hopelessness. Self-harm and attempts at suicide are frequent, and both are accompanied by protracted uncertainty about the future.¹⁸⁶ This is obvious that Australia needs to

¹⁸³ OPCAT. Art. 16(4).

¹⁸⁴ González Pinto, Lorena. (February 2022). *The United Nations Subcommittee on Prevention of Torture: The Effects of Preventive Action*. p. 141

¹⁸⁵ UN Treaty Data Base:

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/CountryVisits.aspx?SortOrder=Alphabetical

¹⁸⁶ Amnesty International. (2 August 2016). *Australia: Appalling abuse, neglect of refugees on Nauru* [Press Release] <https://www.amnesty.org/en/latest/press-release/2016/08/australia-abuse-neglect-of-refugees-on-nauru/>

undergo changes and the SPT cannot be effective if it imposes obstacles. The Subcommittee needs to report cases and situation especially these kinds of states.

Lack of access to detention places does not always end up with suspension. For example, an incident that occurred during a visit by a subcommittee to Station No. 1 in San Lorenzo visit to Paraguay in 2010. The station commander was uncooperative during the visit, interrupting interviews of detainees in an aggressive manner and causing the visit to be temporarily suspended. The incident was resolved thanks to intervention from the Ministry of the Interior and that the subcommittee informed local authorities so that they could take appropriate action. The Subcommittee recommended in its report that the state party take steps to ensure that similar incidents do not occur in the future and that the subcommittee be informed of any measures taken in response to the incident.¹⁸⁷

The SPT completed its visit to Armenia in 2013. The visit was focused on NPM. The Subcommittee found that not all credential letters granting unrestricted access to detention facilities in Armenia were received before the joint visits began, which could have restricted access in violation of article 12 of the OPCAT. The SPT stressed the significance of obtaining a general letter of credentials, providing access to all places of detention, issued at the highest level necessary for it to be effective with any authority in control of such a facility in its report.¹⁸⁸

In May 2016, the Subcommittee attempted to visit a variety of institutions across Ukraine during their trip, including pretrial and temporary detention centers, prison facilities, a mental health hospital, a social care institution, and facilities controlled by the State Security Service. However, the Subcommittee was unable to fully carry out its duties, as they were denied access to all but one State Security Service facility and faced delays in

¹⁸⁷ UN Office of the High Commissioner for Human Rights (OHCHR). (30 May 2011). *Report on the human rights situation in Paraguay from 13 to 15 September 2010*. para. 41. Retrieved from: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/CountryVisits.aspx [accessed 28 January 2023]

¹⁸⁸ UN Office of the High Commissioner for Human Rights (OHCHR). (22 May 2015). *Report on the visit for the purpose of providing advisory assistance to the national preventive mechanism of the Republic of Armenia*. para. 8. Available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/CountryVisits.aspx

accessing the one facility to which access had not been denied, making it difficult for the delegation to trust the accuracy of their findings.¹⁸⁹

Furthermore, while the authorities were cooperative during the planning phase of the visit, the Subcommittee was not given a complete and comprehensive list of all locations where individuals were deprived of their liberty and their addresses. Additionally, the credentials provided did not fully meet the Subcommittee's requests or the standards for access outlined in the Optional Protocol.¹⁹⁰

The national preventive mechanism of Ukraine frequently conducts unannounced visits to detention centers and has a close relationship with civil society organizations. It involves these groups in its visits and consultations, as well as in its organizational structure. However, the subcommittee noted that the NPM is not able to visit all detention locations due to limited access to State Security Service facilities, where individuals may be held for investigation.¹⁹¹

The reasons for a lack of cooperation from states with the Subcommittee on the Prevention of Torture could be many and vary from case to case. It may be due to political, legal, or security reasons, or simply a lack of awareness of the Subcommittee's mandate. The reasons could also be based on specific conditions or circumstances at the local level, or broader concerns about human rights and the treatment of individuals in detention. In some cases, the lack of cooperation may be due to a lack of resources or staffing to facilitate visits.¹⁹²

¹⁸⁹ UN Office of the High Commissioner for Human Rights (OHCHR). (15 May 2017). Report on the human rights situation in Ukraine 16 February to 15 May 2017. para. 2. Available at: <https://www.refworld.org/docid/5940f16f4.html> [accessed 26 February 2023]

¹⁹⁰ Ibid. para. 3.

¹⁹¹ Ibid. para. 17.

¹⁹² Lorena González Pinto, The United Nations Subcommittee on Prevention of Torture: The Effects of Preventive Action, pp. 140-143

2.6. Australia

Australia has been a party to the UN Convention against Torture (UNCAT) since 1989 and ratified the OPCAT in December 2017. Ratification of the Optional Protocol brings several responsibilities to the states and requires State Parties to be proactive rather than only avoid torture and ill-treatment. By ratifying, states agree to welcome periodic visits by the SPT.¹⁹³

What makes Australia significant to study is that it may seem it does not need the OPCAT since it is generally believed that torture is not tolerated there. But the reality is quite different. There are many cases of torture and ill-treatment in places of detention, and it continues. especially in refugee detention centers the situation is even worse. The use of taser on a man more than 40 times in a week,¹⁹⁴ the death of Mr. Wand in a prison transport vehicle,¹⁹⁵ and Mulrunji case¹⁹⁶ are only a few examples.

Although Australia is proud of its records on human rights in international level such as torture and other ill-treatment,¹⁹⁷ we cannot say the level of human right violations is low there. For example, the Victorian Ombudsman carried out an investigation in the Melbourne Youth Justice Precinct about an incident of a detainee who was assaulted by

¹⁹³ Fletcher, Adam. (2012). *Australia and the OPCAT*. *Alternative Law Journal*, 37(4). pp. 233–237. <https://doi.org/10.1177/1037969X1203700404>

¹⁹⁴ Weber, David. (10 December 2010). *Perth Man Tasered more than 40 times in a week*. *ABC Online*. <http://www.abc.net.au/am/content/2010/s3089736.htm>; Needham, Kirsty. (17 March 2011). *Outrage over “beanbag rounds” fired at detainees*. *Sydney Morning Herald*. <https://www.smh.com.au/national/outrage-over-beanbag-rounds-fired-at-detainees-20110316-1bxc6.html>

¹⁹⁵ Wynne, Emma. (5 October 2011). *Prison guard given record fine over Ward death*. *ABC News Online*. Retrieved from: <http://www.abc.net.au/local/stories/2011/10/05/3333163.htm>

¹⁹⁶ Wainwright, Sofie. (2020, December 3). *Family of Palm Island man who died in police custody relieved memorial has new home*. *ABC News*. Retrieved from: <https://www.abc.net.au/news/2020-12-03/palm-island-doomadgee-memorial-moved-from-police-station/12946248>

¹⁹⁷ Human Rights Council 18th Session. (23 September 2011). *Statement by Australia on Human Rights Situations that Require the Council’s Attention*. Retrieved from: <http://www.geneva.mission.gov.au/gene/Statement233.html>

the prison offices and threatened not to complain. In the report, issues such as overcrowding which resulted in detainees using buckets instead of toilets.¹⁹⁸ The UN Committee against Torture, on the other hand, accuses conditions of detention places constitute cruel, inhuman, and degrading treatment and finds it breach of the UNCAT. Also, the UN Human Rights Committee considers unhygienic conditions of detention as a breach of article 7 (or 10) of the International Covenant on Civil and Political Rights.¹⁹⁹ Media itself has documented many cases of ill-treatment and torture in Australian prisons, police custody and immigration detention centers.

The situation of asylum seekers are the worst in Australia. They are kept in the Nauru and Manus Island detention centers. On the one hand, the conditions of detention centers are very bad. Lack of privacy, overcrowding, no windows, and little air flow are only a few of them. On the other hand, they face significant human right violations such as torture and sexual assault.²⁰⁰ People in detention centers, especially women and children, often being raped, are getting sexual proposals in exchange of some benefits by guards.²⁰¹ Self-harm and suicide is culminating among detainees.²⁰²

¹⁹⁸ Victoria, Ombudsman. (October 2010). *Whistleblowers Protection Act 2001: Investigation into conditions at the Melbourne Youth Justice Precinct*. Melbourne: Government Printer. Available at: <https://catalogue.nla.gov.au/Record/5232531>

¹⁹⁹ Fletcher, Adam. (2012). *Australia and the OPCAT*. p. 234.

²⁰⁰ Barnes, Jamal. (December 2022). *Suffering to Save Lives: Torture, Cruelty, and Moral Disengagement in Australia's Offshore Detention Centres*. *Journal of Refugee Studies*, Volume 35, Issue 4. Pages 1508–1529. Available at: <https://doi.org/10.1093/jrs/feac041>

²⁰¹ Australian Senate. (2017). *Serious Allegations of Abuse, Self-Harm and Neglect of Asylum Seekers in Relations to the Nauru Regional Processing Centre, and Any like Allegations in Relation to the Manus Regional Processing Centre*. Legal and Constitutional Affairs References Committee. Commonwealth of Australia. Available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/NauruandManusRPCs

²⁰² Australian Human Rights Commission. (2011). *Immigration detention at Villawood: Summary of observations*. Retrieved from: http://www.hreoc.gov.au/human_rights/immigration/idc2011_villawood.html

Stanford Human Rights Clinic reports that a man ‘had been forced to masturbate a guard in a shower while another guard sodomized him’. The victim stated that he is even in a worse situation than before fleeing stating that “I came here to save my life . . . and I got another horrible one”.²⁰³ In 2016, over 2000 incident reports were leaked from the Nauru detention center staff. Most of them involved children.²⁰⁴ Sexual violations have been documented by human right groups, Australian government by Moss Report²⁰⁵, and the Australian Senate.

The SPT and NPM system is not based on “blaming and shaming”. According to Article 16 of the Optional Protocol, the SPT only can publish visit reports with consent of the state. The aim of this system is to prevent torture and ill-treatment in detention places rather than blaming State Parties. Australia has relatively strong economy and is able to fund the requisite measures of human right obligations. However, over the time, many different governmental and non-governmental organizations have found numerous problems regarding treatment of people in places of detention.²⁰⁶

Failure to prevent torture and ill-treatment in its territory carries great consequences for reputation of countries. Torture in places of detention accusations have been levelled up

²⁰³ Stanford International Human Rights and Conflict Resolution Clinic. (2017). *The Situation in Nauru and Manus Island: Liability for Crimes Against Humanity in the Detention of Refugees and Asylum Seekers*. Communique to the Office of the Prosecutor of the International Criminal Court Under Article 15 of the Rome Statute. Retrieved from: <https://law.stanford.edu/publications/communique-to-the-office-of-the-prosecutor-of-the-international-criminal-court-under-article-15-of-the-rome-statute-the-situation-in-nauru-and-manus-island-liability-for-crimes-against-humanity/>

²⁰⁴ Farrell, Paul; Evershed, Nick; and Davidson, Helen. (2016). *The Nauru Files: Cache of 2,000 Leaked Reports Reveal Scale of Abuse of Children in Australian Offshore Detention*. The Guardian. Retrieved from: <https://www.theguardian.com/australia-news/2016/aug/10/the-nauru-files-2000-leaked-reports-reveal-scale-of-abuse-of-children-in-australian-offshore-detention>

²⁰⁵ Moss, Philip. (2015) *Review into Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre in Nauru*. Final Report. Retrieved from: <https://www.homeaffairs.gov.au/reports-and-pubs/files/review-conditions-circumstances-nauru.pdf>

²⁰⁶ Fletcher, Adam. (2012). *Australia and the OPCAT*. p. 233.

in many states, including the UK and the USA, especially in the context of “war on terror”.²⁰⁷

Deaths in custody, especially aboriginal people, have been a major issue in Australia. Cases such as Mr Ward in Western Australia and Mulrunji in Queensland are a few examples of the situation.

On 19 November 2004, Cameron Doomadgee, also known as Mulrunji, died in custody in Palm Island. He was picked up after causing a public nuisance and placed in a two-cell lockup in Palm Island Police Station.²⁰⁸ Autopsy report found that his liver and spleen was ruptured because of beaten and the death caused by "an intra-abdominal hemorrhage caused by a ruptured liver and portal vein".²⁰⁹

In January 2008, Ian Ward, commonly known as Mr. Ward, was arrested by Laverton police. He was stopped and charged with driving while intoxicated. He was then driven to a courthouse and kept in custody. After custody he was driven to a prison which was 352 kilometers away. The van in which he was kept was 47°C that day and air conditioning was not working. He had a cut on his head and third-degree burns. The driver of the van noticed him lying on the floor but did not stop for a checking. He was then died in the van.²¹⁰ This case shows systematic failures and since then 15 years passed. However, the situation did not get better. from July 2021 to June 2022, 106 deaths have been recorded.²¹¹

Before discussing Australia’s relation with the SPT, it is notable to study a case. Since 2012, Australia has re-established offshore processing on Manus Island and Nauru, and there have been ongoing reports of torture and cruel, inhuman or degrading treatment or

²⁰⁷ Ibid.

²⁰⁸ Koch, Tony & Mirror Australian Telegraph Publications. (29 March 2005). *Island of Distress*. The Australian. Retrieved from: <https://www.theaustralian.com.au/>

²⁰⁹ Koch, Tony & Mirror Australian Telegraph Publications. (7 February 2005). *Care or custody: the Doomadgee issue*. The Australian. Retrieved from: <https://www.theaustralian.com.au/>

²¹⁰ Hayward, Andrea. (26 February 2008). *WA unveils prisoner transport changes*. The Age.

²¹¹ Gillespie, Eden. (29 December 2022). *Advocates call for urgent action after two ‘incredibly tragic’ Aboriginal deaths in custody*. Retrieved from: <https://www.theguardian.com/australia-news/2022/dec/30/advocates-call-for-urgent-action-after-two-incredibly-tragic-aboriginal-deaths-in-custody>

punishment (CIDT) inflicted upon asylum seekers and refugees. As part of its efforts to prevent deaths at sea and "stop the boats", the Australian government intercepts migrant vessels under 'Operation Sovereign Borders', either pushing them back to their country of departure or detaining them indefinitely in offshore centres, where they are denied settlement in Australia.²¹² However, this policy has been extensively criticized by human rights organizations for arbitrarily detaining refugees in inhumane conditions, providing inadequate health care, and causing severe physical, mental, and sexual harm that qualifies as CIDT or torture.²¹³

In 2012 and 2013, Australia and the host nations signed Memorandums of Understanding (MoUs) that established the processing and settlement of refugees, with a commitment to treat them with dignity, respect, and in accordance with human rights standards.²¹⁴ However, despite these promises, asylum seekers and refugees suffered from significant human rights violations such as torture and CIDT.²¹⁵ Although the detention center populations were different, the conditions they endured were similar. For instance, on Manus Island, single adult males were kept in World War II-era tin sheds with no windows, poor air flow, and only two fans to cool the space.²¹⁶ The overcrowding and

²¹² Amnesty International. (2013). *This is Breaking People: Human Rights Violations at Australia's Asylum Seeker Processing Centre on Manus Island, Papua New Guinea*. Broadway: Amnesty International Australia. Retrieved from: <https://www.amnesty.org/en/documents/asa12/002/2013/en/>

²¹³ Lowenstein, Antony. (2018). *Australia's Brutal Refugee Policy Is Inspiring the Far Right in the EU and Beyond*. The Nation. Retrieved from: <https://www.thenation.com/article/archive/australias-brutal-refugee-policy-inspiring-far-right-eu-beyond/>

²¹⁴ Department of Foreign Affairs and Trade (DFAT). (2013a). *Memorandum of Understanding Between the Government of the Independent State of Papua New Guinea and the Government of Australia, Relating to the Transfer to, and Assessment and Settlement in, Papua New Guinea of Certain Persons, and Related Issues*. Available at: <https://www.dfat.gov.au/geo/papua-new-guinea/memorandum-of-understanding-between-the-government-of-the-independent-state-of-papua-new-guinea-and-the-government-of-austr>

²¹⁵ Department of Foreign Affairs and Trade (DFAT). (2013b) *Memorandum of Understanding Between the Republic of Nauru and the Commonwealth of Australia, Relating to the Transfer to and Assessment of Persons in Nauru, and Related Issues*. Available at: <https://www.dfat.gov.au/geo/nauru/memorandum-of-understanding-between-the-republic-of-nauru-and-the-commonwealth-of-australia-relating-to-the-transfer-to-and>

²¹⁶ Australian Senate. (2014). *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014*. Legal and Constitutional Affairs References Committee. Commonwealth

lack of privacy in the accommodations not only affected mental health but also posed security concerns for refugees who could not lock their rooms. On Nauru, the tents were infested with mold, causing eye and skin infections. Both islands had inadequate healthcare and clothing, limited drinking water, and spoiled food infested with insects due to the heat.²¹⁷

In addition to the inhumane detention conditions, asylum seekers and refugees were subjected to ongoing violence. This violence included sexual assault, rape, and sexual exploitation, where guards would often proposition detainees for sexual favors in exchange for benefits. Men, women, and children were all victims of these heinous acts. The Stanford Human Rights Clinic reported one case where a man was forced to masturbate a guard while another guard sodomized him in the shower. The man stated that he had "no choice" and that he had hoped to find safety by coming to the detention center, but instead, he found another horrible experience.²¹⁸

Furthermore, in 2016, The Guardian newspaper published over 2000 leaked incident reports from staff on Nauru, more than half of which involved children. The reports contained detailed accounts of self-harm, abuse, and sexual and physical violence. These incidents caused significant harm to the detainees and created a pervasive culture of fear and insecurity in the detention centers.²¹⁹

The incarcerated individuals are using various methods to threaten their own lives, such as hanging themselves, ingesting razor blades, cutting their wrists and throats, taking lethal doses of medication, and walking into the sea. Additionally, a group of prisoners are deliberately refusing to eat as a way of tempting death. The authorities are not

of Australia. Retrieved from:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Maus_Island

²¹⁷ Barnes, Jamal. Suffering to Save Lives: Torture, Cruelty, and Moral Disengagement in Australia's Offshore Detention Centres, *Journal of Refugee Studies*, Volume 35, Issue 4, December 2022, pp. 1509–1510, <https://doi.org/10.1093/jrs/feac041>

²¹⁸ Barnes, Jamal. (December 2022). *Suffering to Save Lives: Torture, Cruelty, and Moral Disengagement in Australia's Offshore Detention Centres*. p.1510.

²¹⁹ Farrell, Paul; Evershed, Nick; and Davidson, Helen. (2016). *The Nauru Files: Cache of 2,000 Leaked Reports Reveal Scale of Abuse of Children in Australian Offshore Detention*.

surprised by these actions, as Australia has been engaged in this practice for a long time. The officials are aware of the negative impact of prolonged and futile imprisonment, which can lead to severe mental health issues. They have dedicated significant resources to preventing the prisoners from taking their own lives. The cost of this effort has been factored into the Pacific solution. In the past, the strategy of isolating refugees on remote islands has been successful in concealing their situation from the public.²²⁰

As of now, there are 1,159 refugees and asylum-seekers located on Nauru, with 410 people living in the Refugee Processing Centre and 749 residing outside of it. The majority of these individuals are from Iran, while others come from various countries including Afghanistan, Iraq, Myanmar, Pakistan, Sri Lanka, and some are stateless.

There are 173 children among the refugee and asylum-seeker population on the island, with 134 of them being classified as refugees and 39 seeking asylum.²²¹

Amnesty International has reported several incidents of violence and assault against refugees on Nauru by local Nauruan men. In one case, a refugee from Bangladesh was brutally attacked by a Nauruan man who threw a rock at him, causing serious head injuries. In another incident, a Somali woman's husband was attacked by Nauruan men, who hit him on the head with a machete and attempted to break into their housing the following night. Additionally, refugees have reported being robbed by Nauruan men while going to work or buying food, with such assaults happening multiple times a week.²²²

²²⁰ Marr, David. (2018, March 13). *The Nauru files are raw evidence of torture. Can we look away?* The Guardian. Retrieved from: <https://www.theguardian.com/australia-news/2016/aug/10/the-nauru-files-are-raw-evidence-of-torture-can-we-look-away>

²²¹ Amnesty International. (2022b, August 8). *Australia has turned Nauru into an open-air prison*. Retrieved from: <https://www.amnesty.org/en/latest/press-release/2016/10/australia-has-turned-nauru-into-an-open-air-prison/>

²²² Amnesty International. (2022, August 8). *Australia: Appalling abuse, neglect of refugees on Nauru*. Retrieved from: <https://www.amnesty.org/en/latest/press-release/2016/08/australia-abuse-neglect-of-refugees-on-nauru/>

These incidents have led to a state of fear among refugees and asylum seekers, particularly at night. Women have reported being too afraid to leave the camps, and those who do venture out do so in groups or with male companions. Moreover, six women have described instances of sexual harassment or assault, ranging from groping and explicit threats to attempted rape. In one case, a woman was almost driven to a remote area of the island by Nauruan men with the intent to rape her. Another woman had to quit her job at a local shop after being repeatedly touched by her co-workers on her first day.²²³

SPT and Australia

The SPT visit to Australia has been failed twice. First one suspended due to Covid-19 in 2020, the second one suspended in on 23 October 2022 due to lack of cooperation.²²⁴ Some places of detention in Australia prevented visit of the delegation of the SPT, carry out full visits, and did not provide requested documents. The SPT tried to connect with the government and resolve problems but could not reach its aim. As a result of lack of cooperation, the Subcommittee could not carry out its mission properly and suspended the visit.²²⁵

Australia is a federal government and all states within it are obliged to comply with the Optional Protocol. New South Wales detention facilities and Queensland inpatient units did not allow the access, therefore Australia breached its obligations under the OPCAT.²²⁶

²²³ Ibid.

²²⁴ UN Treaty Database. Retrieved from:

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/CountryVisits.aspx?SortOrder=Alphabetical

²²⁵ OHCHR. (n.d.-b). *UN torture prevention body suspends visit to Australia citing lack of co-operation*.

Retrieved from: <https://www.ohchr.org/en/press-releases/2022/10/un-torture-prevention-body-suspends-visit-australia-citing-lack-co-operation>

²²⁶ Human Rights Law Center. (2022, October 23). *Joint statement of concern regarding suspension of UN Subcommittee on Torture visit to Australia following lack of co-operation in New South Wales and Queensland*. Retrieved from: <https://www.hrlc.org.au/news/2022/10/24/joint-statement-of-concern-regarding-suspension-of-un-subcommittee-on-torture-visit-to-australia-following-lack-of-co-operation-in-new-south-wales-and-queensland>

According to Sophie McNeil, a representative of the New York-based human rights organization Human Rights Watch (HRW), the cancellation of a visit was the result of a bureaucratic error. McNeil stated that while there is broad political support at the federal level for the Optional Protocol to the Convention against Torture (OPCAT), there are concerns at the state and territorial level regarding funding. These worries stem from the fear that if UN inspectors were to come in and identify necessary changes, there would be a financial obligation to implement those changes. Consequently, a disagreement over funding has now resulted in an unfortunate and “embarrassing” international situation.²²⁷

On Monday, the Premier of New South Wales, the largest state in Australia, Dominic Perrottet, defended his decision to prevent the UN panel from inspecting their prison facilities by stating that the state holds a high standard of care and that Australia is a sovereign nation. He expressed that the state has an independent process in place for overseeing their jail system and that any complaints are dealt with appropriately through the support of their independent ombudsman and correctional staff. The Attorney General, Mark Dreyfuss, on the other hand, expressed disappointment in the blocking of the delegation's visit and stated that this cancellation could have been prevented.²²⁸

The refusal to allow the SPT access to detention facilities in New South Wales and inpatient units in Queensland, as well as the denial of requested information and documentation, is met with strong condemnation. This obstruction is considered to be a violation of Australia's obligations under the OPCAT agreement. As a party to the agreement, states are required to receive the SPT in their territory and grant it the ability to fully exercise its mandate, which includes unrestricted access to places of detention. There is growing concern that this obstruction sets a negative precedent for future cooperation with regular preventive visits to detention facilities by the independent

²²⁷ Al Jazeera. (2022, October 24). UN ends Australia anti-torture mission after inspectors barred. Retrieved from: <https://www.aljazeera.com/news/2022/10/24/un-ends-australia-anti-torture-mission-after-inspectors-bared>

²²⁸ Ibid.

National Preventive Mechanisms (NPMs) that Australia is obligated to establish under OPCAT.²²⁹

A joint statement from 74 prominent human rights organizations and legal professionals denounced the actions of the governments of Queensland and New South Wales and called on the federal government to put into place a nationwide plan to ensure compliance.²³⁰ Given that the right to freedom from torture is an unalterable principle of international law, Human Rights Law Center (HRLC) urge the New South Wales and Queensland governments to uphold their commitment to the rules-based international legal system, reconsider their decisions to block access, and fully cooperate with the SPT.²³¹

Additionally, HRLC call on all jurisdictions throughout Australia to take into account the recommendations put forth by the Australian Human Rights Commission's Road Map to OPCAT Compliance and, if they have yet to do so, to make a commitment to the prompt introduction of legislation that will bring Australia's OPCAT obligations into domestic law.²³²

Former Australian Prime Minister Malcolm Bligh Turnbull advised the governments of New South Wales and Queensland to “think carefully about the international company they are keeping”.²³³

²²⁹ Human Rights Law Center. (2022, October 23). *Joint statement of concern regarding suspension of UN Subcommittee on Torture visit to Australia following lack of co-operation in New South Wales and Queensland.*

²³⁰ Rose, Tamsin. (2022, October 24). *UN accuses Australia of ‘clear breach’ of human rights obligations as it suspends tour of detention facilities.* The Guardian. <https://www.theguardian.com/australia-news/2022/oct/23/un-accuses-australia-of-clear-breach-of-human-rights-obligations-as-it-suspends-tour-of-detention-facilities>

²³¹ Human Rights Law Center. (2022, October 23). *Joint statement of concern regarding suspension of UN Subcommittee on Torture visit to Australia following lack of co-operation in New South Wales and Queensland.*

²³² Ibid.

²³³ Rose, Tamsin. (2022, October 24). *UN accuses Australia of ‘clear breach’ of human rights obligations as it suspends tour of detention facilities.*

The Australian Human Rights Commission is advocating for all state and territory governments in Australia to fully adopt a crucial human rights framework for individuals in detention following the suspension of a visit by United Nations inspectors. As a result, the Commission's President and Human Rights Commissioner are calling on Attorneys-General across the country to convene an urgent meeting to reiterate Australia's commitment to the OPCAT framework and to detail concrete, immediate steps to ensure Australia's compliance with its OPCAT obligations.²³⁴

President Emeritus Professor Rosalind Croucher stated, "This situation is unfortunate for Australia, both in terms of its international reputation and the responsibility of Australian authorities to safeguard individuals in detention."²³⁵ The Human Rights Commissioner of Australia, Lorraine Finlay, added, "The actions of the governments of New South Wales and Queensland are puzzling, especially since the Commonwealth government and all other states and territories are providing unrestricted access. The goal of the UN delegation is to foster and support our federal, state, and territorial governments through constructive engagement, not to criticize or dictate to them."²³⁶

²³⁴ Australian Human Rights Commission. (2022, October 24). *Call for urgent action to address fallout from suspension of UN SPT visit*. Retrieved from: <https://humanrights.gov.au/about/news/media-releases/human-rights-commission-calls-urgent-action-address-fallout-suspension-un>

²³⁵ Stayner, Tom. (2019, October 24). Australian Human Rights Commission slams use of force in immigration detention. SBS News. <https://www.sbs.com.au/news/article/australian-human-rights-commission-slams-use-of-force-in-immigration-detention/hyz2ec3p8>

²³⁶ Australian Human Rights Commission. (2022, October 24). *Call for urgent action to address fallout from suspension of UN SPT visit*.

2.7. The United Kingdom

In British law the use of torture has been prohibited for several centuries under common law. Torture practice was formally abolished after Felton case where a lieutenant in the English Army, John Felton was tortured on the rack and executed. After his death the judges resisted that use of torture is against law.²³⁷ Although today the situation torture prevention is better in the UK prisons than most countries, its involvement in prisoner abuses in other countries is still a big issue. Since 9/11 terror attack, there have been hundreds of allegations regarding the UK's involvement in prison abuse. The allegations involved direct participation of British officers and indirect support by them.²³⁸

Response of the UK to these allegations has always been denial while preventing release of concerning information into public sphere. Details of allegations has been brought to light by former journalists, lawyers, and NGOs with testimonies of prisoners and prison personnel. This position has been sustained even as the government has established, or engaged with, a number of parliamentary, police and judicial investigations into allegations of British involvement.²³⁹

Shaker Aamer who spent 13 years in Guantanamo Bay without any charge and released in October 2015 without trial witnessed UK agents torturing while he was in detention.²⁴⁰ He is a British citizen and had been returned to Britain after his release. He sued the British government for involvement in his abuse and alleged that Britain's security and intelligence officials were aware of he has been tortured by US officials.²⁴¹ He also

²³⁷ Jardine, David (1837). *A Reading on the Use of Torture in the Criminal Law of England*. London: Baldwin and Cradock. pp. 10–12.

²³⁸ Sir Gibson, Peter. (2013). *The report of the Detainee Inquiry*. The Stationery Office Limited. p. 7. Retrieved from: www.gov.uk/cabinet-office

²³⁹ Blakeley, Ruth, & Raphael, Sam. (2017). *British torture in the 'war on terror.'* *European Journal of International Relations*, 23(2). pp. 243–266. <https://doi.org/10.1177/1354066116653455>

²⁴⁰ Amnesty International UK. (2015, October 30). *Shaker Aamer: 13 years in Guantánamo Bay, never charged with any crime*. Retrieved from: <https://www.amnesty.org.uk/shaker-aamer-13-years-guantanamo-bay-torture-uk>

²⁴¹ Davies, Caroline; Norton-Taylor, Richard; Elgort, Jessica; & Pilkington Ed. (2015b). *Shaker Aamer lands back in UK after 14 years in Guantánamo Bay*. *The Guardian*. Retrieved from:

alleged that UK officials passed ‘knowingly false information’ to US interrogators and this led his capture and detention to Guantanamo Bay.²⁴² The UK government denied any involvement in Aamer’s abuse in prison stating that Britain ‘did not accept allegations of ... complicity in his mistreatment’.²⁴³ British officials always emphasized its commitment to human rights when addressing questions regarding this case.²⁴⁴

The Detainee Inquiry which was commissioned by Prime Minister David Cameron in 2010 compiled over 20,000 documents and issued a report before its closure in 2012. These documents pointed out UK involvement in prison ill-treatment. The Inquiry asked to investigate the allegations and identified 40 cases that best describe it and “prepared detailed analyses, which are necessarily confidential, of documents received by the Inquiry on each of the 40 cases.”²⁴⁵

One of the main issues in these allegations was UK involvement in CIA’s (Central Intelligence Agency) Rendition, Detention and Interrogation (RDI) programme which intended to protect America after 9/11 terror attack by building secret prisons but it deprived people’s basic rights, facilitated torture, captured the wrong persons, and held them for years without access to legal representation. The Senate Select Committee on Intelligence published a study in December 2014 which provided clear evidence of torture and other ill-treatment such as repeated beatings, sleep deprivation, use of ice baths, and sexual assault.²⁴⁶ Prisoners were subjected to mock executions to take them

<http://www.theguardian.com/world/2015/oct/30/shaker-aamer-lands-back-in-uk-14-years-in-guantanamo-bay>

²⁴² Swann, Steve. (2012). *Guantánamo inmate Shaker Aamer to sue UK for defamation*. BBC News Online. Retrieved from: <http://www.bbc.co.uk/news/uk-20715511>

²⁴³ Davies, Caroline; Norton-Taylor, Richard; Elgort, Jessica; & Pilkington Ed. (2015b). *Shaker Aamer lands back in UK after 14 years in Guantánamo Bay*.

²⁴⁴ Blakeley, Ruth, & Raphael, Sam. (2017). *British torture in the ‘war on terror.’* pp. 243–266.

²⁴⁵ Sir Gibson, Peter. (2013). *The report of the Detainee Inquiry*.

²⁴⁶ Senate Select Committee on Intelligence (SSCI). (2014). *Committee study of the Central Intelligence Agency’s detention and interrogation program*. Retrieved from: <https://www.intelligence.senate.gov/sites/default/files/publications/CRPT-113srpt288.pdf>

‘to the verge of death and back again’ and were beaten severely so they passed out in the RDI program.²⁴⁷

The use of torture is not new in British history. Indeed, since 2001, US and UK prisoner abuse practices have more closely resembled practices that have been at the core of the countries' long-running imperial agendas than they have constituted a divergence from the normative behavior of leading liberal-democratic states. In the context of British imperial violence, the use of torture was severely brutal, sometimes even reaching genocidal proportions. British officials themselves often involved in torture and abuses, as well as beside their colonial partners.²⁴⁸ Mau Mau uprising in Kenya in the 1950s is a very obvious example for illustrating British torture history. Same situation was also the case in uprisings in Malaya (1948–1960), in Cyprus (1955–1959) and in Aden (1963–1967).²⁴⁹ Alongside practice of torture outside of the UK in the early 1971 the use of torture came into the country with Northern Ireland conflict. Torture practice became a routine so that so-called ‘Five Techniques’: sleep deprivation, hooding, subjecting to noise, food and drink deprivation, and stress positions.²⁵⁰

Despite these allegations, the situation in prisons is quite good in comparison to other states in the territory of the UK. The SPT completed its visit to the UK in September 2019. In its report there are notable recommendations and comments in order to improve prison conditions. In the following part of this paragraph, we will discuss these lacks in UK’s prison system. ALSO PROS

²⁴⁷ International Committee of the Red Cross (ICRC). (2007). *ICRC report on the treatment of fourteen ‘high value detainees’ in CIA custody*. Retrieved from: [https://www.therenditionproject.org.uk/pdf/PDF%20101%20\[ICRC.%20Feb%202007.%20Report%20on%20Treatment%20of%2014%20HVD%20in%20CIA%20Custody\].pdf](https://www.therenditionproject.org.uk/pdf/PDF%20101%20[ICRC.%20Feb%202007.%20Report%20on%20Treatment%20of%2014%20HVD%20in%20CIA%20Custody].pdf)

²⁴⁸ Elkins, Carolina. (2005). *Britain’s Gulag: The Brutal End of Empire in Kenya*. London: Jonathan Cape. Available from: <https://www.jstor.org/stable/4100642>

²⁴⁹ Curtis, Mark. (2003). *Web of Deceit: Britain’s Real Role in the World*. London: Vintage. Available from: https://www.academia.edu/2928336/Web_of_Deceit_Britains_real_role_in_the_world

²⁵⁰ Blakeley, Ruth, & Raphael, Sam. (2017). *British torture in the ‘war on terror.’* pp. 243–266.

Lack of a maximum length of immigration detention

The Subcommittee personnel held the visit consisted of six SPT members and three human rights officers and two security officers provided from the Office of the United Nations High Commissioner for Human Rights.²⁵¹ While gathering information about the situation the SPT used reports of the Committee against Torture (CAT) and the Human Rights Committee (HRC). Even though the CAT in its 2013²⁵² and 2019²⁵³ and the HRC in its 2015²⁵⁴ reports recommended the UK to determine a maximum length of immigration detention, it still stays as a lack in the system. As a response to this issue, the British government argues that immigration detentions try to release immigrants as soon as possible and keep them in detention centers for the shortest time possible. However, reports of NPMs and Subcommittee's visit to Heathrow Immigration Removal Centre (largest immigration removal center in Europe²⁵⁵) show that there are many people whose length of deprivation term passed 12 months. The situation of the detention places themselves are prisonlike. There are hundreds of cases like this.²⁵⁶ Even Her Majesty's Inspectorate of Prisons identified a person who has been prisoned more than five years in 2018.²⁵⁷ Lack of definite length of immigration detention can cause mental health issues for immigrants and increases the risk of use of torture and ill-treatment.²⁵⁸

²⁵¹ Subcommittee on Prevention of Torture. (2021). *Visit to the United Kingdom of Great Britain and Northern Ireland undertaken from 9 to 18 September 2019*, CAT/OP/GBR/ROSP/1. para. 3. Retrieved from: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/CountryVisits.aspx

²⁵² Committee against Torture. (2013). *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its fiftieth session (6-31 May 2013)*, CAT/C/GBR/CO/5. para. 30.

²⁵³ Committee against Torture. (2019). *Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland*. CAT/C/GBR/CO/6. paras. 54–55.

²⁵⁴ Human Rights Committee. (2015). *Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland*, CCPR/C/GBR/CO/7. para. 21.

²⁵⁵ Mitie. (2022, November 15). Care & Custody | Heathrow Immigration Removal Centre (IRC) | Mitie. <https://www.mitie.com/visitors/heathrow-irc/>

²⁵⁶ CAT/OP/GBR/ROSP/1. para. 54.

²⁵⁷ Her Majesty's Inspectorate of Prisons. (2018). *Report on an Unannounced Inspection of Heathrow Immigration Removal Centre Harmondsworth Site by HM Chief Inspector of Prisons: 2–20 October 2017*. p. 5.

²⁵⁸ CAT/OP/GBR/ROSP/1. para. 55.

Age of criminal responsibility

Age of criminal responsibility differs across the world depending on the history and culture of the country. There is no defined age under international law. However, there are some rules. According to Rule 4 of the Beijing Rules “the beginning of that age shall not be fixed at too low an age level”.²⁵⁹ The Committee on the Right of the Child (CRC) recommends that the age of criminal responsibility under 12 not to be acceptable in international law.²⁶⁰ Under British law, minimum age of responsibility is 10 in England and Wales²⁶¹ and 12 in Scotland²⁶². This situation raises concerns and mentioned by the CRC²⁶³, HRC²⁶⁴ and CAT²⁶⁵ in their reports. Despite these concerns, the UK still does not make any changes.

The minimum age of criminal responsibility in England and Wales, currently set at 10 years old, is being criticized by experts as being "ridiculously young." They are calling for the age to be raised to 12 years old, in response to an investigation by The Guardian on youth courts. Currently, children as young as 10 can be convicted of a crime, face police investigation, and potentially have a lifelong criminal record. Despite calls from the UN and other groups to raise the age to the internationally recognized minimum of 12 years old, the UK government has yet to make any changes.²⁶⁶ Other EU countries have

²⁵⁹ UN General Assembly. (29 November 1985). United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"): resolution / adopted by the General Assembly, A/RES/40/33. Rule 4. Available at: <https://www.refworld.org/docid/3b00f2203c.html>

²⁶⁰ UN Committee on the Rights of the Child (CRC). (25 April 2007). *General comment No. 10 (2007): Children's Rights in Juvenile Justice*, CRC/C/GC/10. Para. 32. Available at: <https://www.refworld.org/docid/4670fca12.html>,

²⁶¹ Parliament of the United Kingdom of Great Britain and Northern Ireland. (1933). Children and Young Persons Act. Art. 50. Retrieved from: <https://www.legislation.gov.uk/ukpga/Geo5/23-24/12>

²⁶² Scottish Parliament. (2019). Age of Criminal Responsibility (Scotland) Act. Available at: <https://www.legislation.gov.uk/asp/2019/7/contents/enacted>

²⁶³ CRC/C/GBR/CO/5. para. 78 (a).

²⁶⁴ CCPR/C/GBR/CO/7. para. 23.

²⁶⁵ CAT/C/GBR/CO/6. para. 23.

²⁶⁶ Pidd, H., Parveen, N., Halliday, J., & Wolfe-Robinson, M. (2020, January 31). *Age of criminal responsibility must be raised, say experts*. The Guardian. Retrieved from:

higher ages of criminal responsibility, such as 14 in Germany²⁶⁷, 15 in Sweden²⁶⁸, 16 in Portugal²⁶⁹, and 18 in Luxembourg²⁷⁰.

According to Charlie Taylor, the head of the Youth Justice Board, England and Wales is exhibiting characteristics that deviate from the norm. He expressed the need to reexamine the situation and stated his support, along with the Association of Directors of Children's Services, a prominent police officer, the Association of Youth Offending Team Managers, the Children's Commissioner for England, Anne Longfield, and the prominent children's legal charity Just for Kids Law, for an increase in attention to the issue.²⁷¹

Overrepresentation of ethnic minorities

Another issue that the SPT concerns about is the overrepresentation of minority groups in places of detention, especially Asians and Blacks. According to the SPT's reports, minorities are four times more likely to be detained than White people. They are more likely to be subjected to restriction practices and their death rate in deprivation places are higher. Discrimination based on race can be seen in different studies and statistics.

<https://www.theguardian.com/society/2019/nov/04/age-of-criminal-responsibility-must-be-raised-say-experts>

²⁶⁷ Criminal Code (Strafgesetzbuch, StGB), DEU-1998-L-51220. section 19. Available at:

https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=51220&p_lang=

²⁶⁸ Nordlöf, Kerstin. (2022). Body examinations of underage children committing crime - A Swedish perspective. *Bergen Journal of Criminal Law & Criminal Justice*, 9(2), 60. Available at:

<https://doi.org/10.15845/bjclcj.v9i2.3524>

²⁶⁹ Castro, J. (2011). The punitive turn – are there any points of resistance? An answer from the Portuguese experience in Bailleau, Francis. (eds). *The Criminalisation of Youth: Juvenile Justice in Europe, Turkey and Canada*, Chicago: Independent Publishers Group. Available at:

<https://lib.ugent.be/catalog/rug01:001465874>

²⁷⁰ The Higher Council for Youth. (2008). *The Youth Act of Luxembourg*. Art. 3.

²⁷¹ Pidd, H., Parveen, N., Halliday, J., & Wolfe-Robinson, M. (2020, January 31). *Age of criminal responsibility must be raised, say experts*.

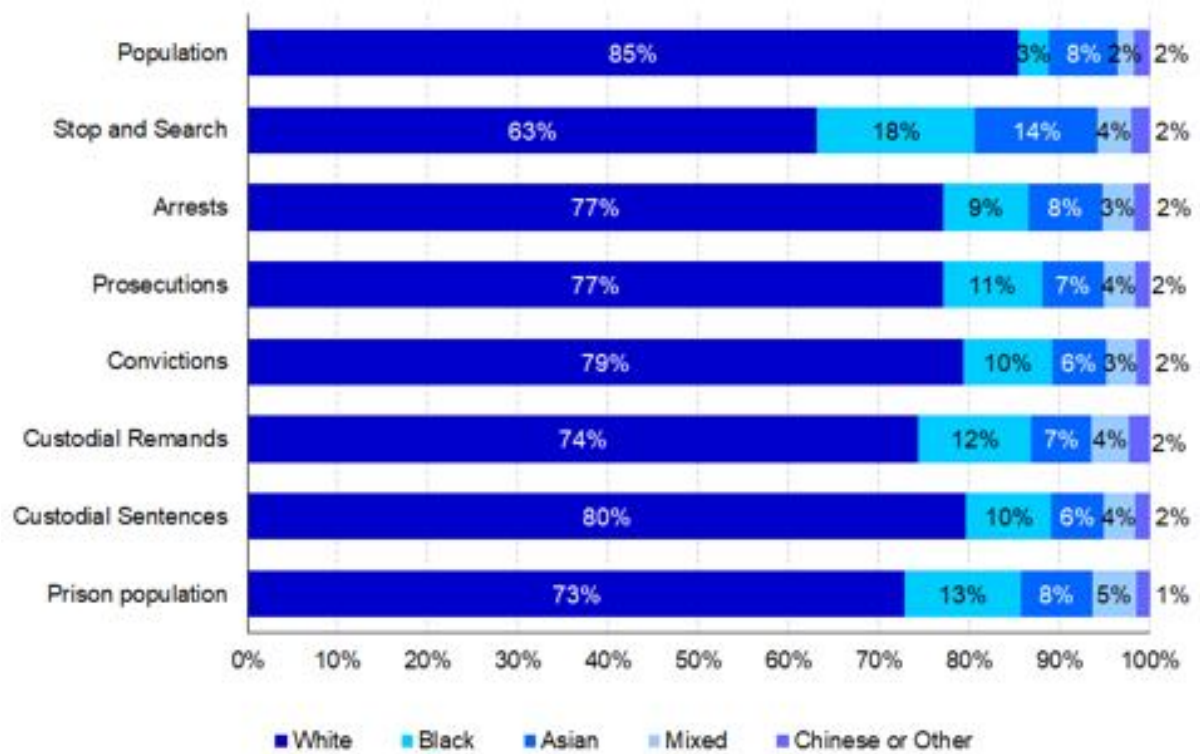


Figure 1. Ethnicity proportions for adults throughout the criminal justice system (2020)²⁷²

According to the Ministry of Justice, a total of 27% of the prison population identified as an ethnic minority, while 15 per cent of the population of the United Kingdom consist of minorities. Although, there is a 4 % decrease in the proportion of stop and searches of Black people from 2016/17 to 2020/21, still minorities who were stopped and searched constitutes 43% which is quite high number.²⁷³ 66% of children and 53% of adults arrested in London in 2020/21 were from minorities.

The Lammy Review of 2017, which analyzed the experiences of Black and Minority Ethnic (BAME) individuals within the criminal justice system, concluded that BAME defendants were more likely to enter a plea of not guilty compared to their white

²⁷² The Ministry of Justice. (2020). *National statistics: Ethnicity and the Criminal Justice System*. Retrieved from: <https://www.gov.uk/government/statistics/ethnicity-and-the-criminal-justice-system-statistics-2020/ethnicity-and-the-criminal-justice-system-2020#:~:text=In%202020%2F21%2C%20White%20suspects,%2F17%20and%202020%2F21>.

²⁷³ Ibid.

counterparts. This disparity, as stated in the report, can be attributed to a widespread lack of trust among BAME communities towards the criminal justice system. Tyrone Steele, a lawyer at Justice, added that the backlogs caused by the Covid-19 pandemic and reductions in legal aid have limited opportunities to counteract biases, thereby increasing the likelihood of these biases affecting decisions on remand.²⁷⁴

The Subcommittee recommended to change the situation by relevant trainings, raising awareness. Despite all recommendations, comparing statistics of years 2019 and 2021 shows very little progress.²⁷⁵

²⁷⁴ Gidda, Mirren, & Syal, Rajeev. (2022, March 18). *Proportion of remand prisoners who are minority ethnic rises 17% in six years*. The Guardian. Retrieved from:

<https://www.theguardian.com/society/2022/mar/17/proportion-of-remand-prisoners-who-are-minority-ethnic-rises-17-in-six-years>

²⁷⁵ CAT/OP/GBR/ROSP/1. para. 66.

Chapter 3

The UN human rights treaty body system is a significant achievement in the global struggle for human rights. It is a practical system that combines noble ideals to achieve social justice and individual well-being. The treaty bodies play a vital role in the international human rights protection system by translating universal norms into actionable guidance on human rights standards. They advise States parties on how treaties apply in specific cases, providing guidance on what needs to be done to ensure human rights for all. The treaty body system has a growing set of tools to fulfill its mandate. There is a global consensus on the importance of maintaining the relevance and vitality of the treaty bodies.²⁷⁶

The development and progression of the human rights treaty body system is a significant accomplishment in the global campaign to safeguard human rights. These bodies serve as guardians of the legal norms established by human rights treaties. Governments periodically report to the treaty bodies, as per their legal obligations under the key international human rights treaties, and their policies and legislation are examined by the bodies, who then provide recommendations to States on how to enhance compliance with their human rights obligations. This process is intended to be ongoing and active, and it is the States who created the treaty body system and who are the primary beneficiaries of its work. Collaboration among the bodies is essential in this process.²⁷⁷

The mandate of the SPT requires it to work with both national organizations, whether governmental or non-governmental, and international bodies that engage in preventing torture, including UN bodies and mechanisms and regional institutions or organizations.²⁷⁸ In particular, the SPT's cooperation with UN bodies such as the CAT

²⁷⁶ Ki-moon, Ban. (2012). Statement of United Nations Secretary-General. (Reproduced from Pillay, Navanethem. (2012). A report by the United Nations: Strengthening the United Nations human rights treaty body system. P. 7) Available from: <https://www.refworld.org/pdfid/4fe8291a2.pdf>.

²⁷⁷ Heyns, Christof & Vijoen, Frans. (2002). *The Impact of the United Nations Human Rights Treaties on the Domestic Level*. Kluwer Law International, The Hague. p. 648.

²⁷⁸ OPCAT. Art. 11 (c).

and the Special Rapporteur on Torture is essential, as these organizations can share information about incidents of torture in specific countries and combine their resources to better prevent it.²⁷⁹ Additionally, collaborating with regional bodies such as the Committee for the Prevention of Torture allows the SPT to conduct more targeted visits to states and enhance its preventive efforts. By working closely with various organizations, the SPT can maximize its impact in preventing torture and promoting human rights.²⁸⁰

3.1 National Preventive Mechanisms (NPMs)

National Preventive Mechanisms are monitoring bodies established by States under their jurisdiction. What makes NPMs more is that they can make visits to detention places as many as they can. Unlike the SPT NPMs do not need excessive financial resources to realise a visit. Another positive aspect of NPMs is that they have more information about culture, social life, law, economy, and politics of the State.²⁸¹

The Optional Protocol obliges states to set up national preventive mechanisms at domestic level. According to Article 17 of the OPCAT, a state must comply with this obligation for a maximum of one year after its ratification or accession.²⁸² There is also possibility of postponement of implementation of the OPCAT up to three years. If a state wants to extend postponement, it is possible to extend the period up to two years more.²⁸³ Up to date, 18 States out of 91 has not set up NPM. Kazakhstan and Hungary are the countries which used extension of period under Article 24 and now designated their

²⁷⁹ González Pinto, Lorena. (February 2022). *The United Nations Subcommittee on Prevention of Torture: The Effects of Preventive Action*. Journal of Human Rights Practice, Volume 14, Issue 1. pp. 152-153. <https://doi.org/10.1093/jhuman/huac018>.

²⁸⁰ Kicker, Renate. (2007). *The European Convention on the Prevention of Torture Compared with the United Nations Convention against Torture and its Optional Protocol*, pp. 99-100.

²⁸¹ Lagat, Caroline Jepkosgei. (2018). *Effectiveness of National Preventive Mechanisms in prevention of torture: the case of interconnectedness and cooperation*. University of Ljubljana.

²⁸² OPCAT. Art. 17.

²⁸³ OPCAT. Art. 24.

NPMs. On the contrary, Bosnia and Herzegovina still have not set up its NPM although used postponement despite it ratified the OPCAT in 2008.²⁸⁴

3.1.1. Structure of NPMs

The Optional Protocol is flexible about structure and number of NPMs. A state can set up one or several NPMs depending on government's system and law.²⁸⁵ There are many categories and kinds of NPMs. Wording of Article 3 of the OPCAT let the State to "establish" or "designate/maintain" visiting bodies. In a large spectre, we can separate NPMs into two types: establish a new body for the purpose of the OPCAT or giving NPM functions to an already existing body. Some states such as Italy (National Guarantor for the rights of persons detained and deprived of their liberty) and France (Contrôleurs Généraux des lieux de privation de liberté) created a brand-new body to function as NPM.²⁸⁶ NPM can be designated in following ways:²⁸⁷

- i. Designating a National Human Rights Institution. For example, Turkiye designated National Human Rights Institution of Turkiye as NPM by a cabinet decree in 2014.²⁸⁸
- ii. Designating Ombudsman with involvement of civil society organisations. For example, Slovenia designated its Human Rights Ombudsperson's Office as NPM cooperation with five national NGOs (Slovenian Red Cross, Legal Information Centre for NGOs, Primus Institute, Slovenian Federation of Pensioners' Organisations and Novi paradoks) in 2007.²⁸⁹

²⁸⁴ OHCHR. (n.d.-b). National Preventive Mechanisms. <https://www.ohchr.org/en/treaty-bodies/spt/national-preventive-mechanisms>

²⁸⁵ OPCAT. art. 17.

²⁸⁶ Miloš, V. Janković.(2017). National Mechanisms for the Prevention of Torture within the Wide Mandate Institutions – Focus on the Independence. CRIMEN - časopis za krivične nauke. p. 48. <https://www.ceeol.com/search/article-detail?id=615016>

²⁸⁷ Miloš, V. Janković.(2017). National Mechanisms for the Prevention of Torture within the Wide Mandate Institutions – Focus on the Independence. p. 49

²⁸⁸ Turkey | Association for the Prevention of Torture. (2011, September 27). <https://www.apr.ch/en/knowledge-hub/opcat-database/turkey>

²⁸⁹ Slovenia | Association for the Prevention of Torture. (2007, January 23). <https://www.apr.ch/en/knowledge-hub/opcat-database/slovenia>

- iii. Designating Ombudsman with involvement of regional Ombudsman institution and civil society organisations. For example, Serbia designated Ombudsperson's Office (Protector of Citizens) as its NPM with the ombudsperson's offices and human rights associations in 2006.²⁹⁰
- iv. Designating several institutions. For example, The UK designated 21 institutions as its NPM which is coordinated by Her Majesty's Inspectorate of Prisons.²⁹¹

3.1.2. Empowerment of NPMs

NPMs has three main powers according to Article 19 of the Optional Protocol:²⁹²

- i. Examination of places of detention- NPMs hold regular visits to detention places. The Protocol does not define minimum or maximum number of visits in a year. NPMs can determine it themselves. This is because each State has different characteristics and systems. More frequently visiting will give more benefits and improvements. However, it is not easy for NPMs to visit every detention place in their States. For this reason, NPMs choose places to visit every year according to the situation.²⁹³
- ii. Making recommendations- NPMs give recommendations to relevant authorities regarding the situation in places of detention. The purpose of recommendations is to improve conditions of people who deprived of their liberty and prevent torture and ill-treatment. The scope of recommendations is not limited to NPM's observations of visited place. They also can be regarding legislative gaps and systematically problems.²⁹⁴
- iii. Submitting proposals and observations- NPMs can review legislative framework of their countries and make proposals. Review may include comparison of the national legislation to international standards.²⁹⁵

²⁹⁰ Serbia | Association for the Prevention of Torture. (2006, September 26).

<https://www.ap.t.ch/en/knowledge-hub/opcat-database/serbia>

²⁹¹ United Kingdom | Association for the Prevention of Torture. (2003, December 10).

<https://www.ap.t.ch/en/knowledge-hub/opcat-database/united-kingdom>

²⁹² OPCAT. Art. 19.

²⁹³ Optional Protocol to the UN Convention against Torture Implementation Manual. pp. 92-93.

²⁹⁴ Optional Protocol to the UN Convention against Torture Implementation Manual. p. 93.

²⁹⁵ Ibid.

In order to implement its functions, States carry some obligations to facilitate work of NPM. States undertake following obligations according to Article 20 of the OPCAT²⁹⁶:

- i. To grant access to information about treatment and condition of persons deprived of their liberty and number of those persons- NPMs has access to very wide range of information and documents. Those may be medical records, schedules, internal rules, staff regulations and so on. Some information may be confidential in nature like medical records.²⁹⁷
- ii. To grant access to all places of detention- NPMs may conduct a visit to every place of detention. It is not specified in the OPCAT, but interpretation of Vienna Convention on the Laws of Treaties proposes possibility of unannounced visits.²⁹⁸
- iii. To grant liberty to choose places to visit and people to interview- NPM is free to choose interviewee and where to interview with respect to the rights of the person being interviewed.
- iv. To grant right to contact with the SPT- Article 20(f) is important in the context of cooperation between NPMs and the SPT. It mirrors Article 12(c) which ensures contact of the SPT with NPMs. These two articles serve the main purpose of the Optional Protocol by information exchange and if needed meetings between two OPCAT bodies.²⁹⁹ Cooperation is one of the core ways of the SPT to ensure access to wider information and facilitate its work. Article 11(b)(ii) of the OPCAT put obligation to the SPT to ensure direct contact with NPMs. In some States such as the UK there are more than one NPM and the SPT should guarantee to include all units.³⁰⁰ Articles 11(b)(ii) and 11(b)(iii), on the other hand, able NPMs to get trainings from the SPT in order to strengthening their effectiveness.³⁰¹

²⁹⁶ OPCAT. Art. 20.

²⁹⁷ Optional Protocol to the UN Convention against Torture Implementation Manual. p. 95.

²⁹⁸ United Nations, Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331. Articles 31 and 32 . Available at: <https://www.refworld.org/docid/3ae6b3a10.html>

²⁹⁹OPCAT. Arts. 20(f) and 12(c)

³⁰⁰ Third annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (April 2009 to March 2010). para. 53.

³⁰¹ OPCAT. Arts. 11(b)(ii) and 11(b)(iii).

3.1.3. Cooperation with NPMs

Establishment of NPMs is an initiative in international contexts which brings national entities to contribute to implementation of a treaty. It is also first time that an international human rights body realise its mandate not only by State visits, but also with work of national mechanism.³⁰² In Mexican Draft when the idea first introduced there were suspicions about if it will work. However, now it is called ‘most significant single thing which a state can do to prevent torture and ill-treatment occurring over time’ by Malcolm Evans, Chairperson Subcommittee on Prevention of Torture.³⁰³

The problem with NPMs is that in the OPCAT there is no detailed prescription of how to establish or designate a national mechanism. As noted above, there are some requirements about construction of NPMs such as professional capacities, recommendation functions, and diversity of membership. However, there is no description of how to implement these requirements.³⁰⁴ The fact that 18 States still has not constructed their NPMs is great evidence of it. This is where the SPT comes to the stage. The SPT has ability to advise assist to construction of NPMs.³⁰⁵ It also offers trainings and technical assistance.³⁰⁶ According to the fourth annual report of the SPT only half of the State parties could set up NPMs in 2011.³⁰⁷ Today 73 State Parties has NPMs which proofs the important role of the SPT cooperation.

³⁰² Steinerte, Elina. (2013). *The Changing Nature of the Relationship between the United Nations Subcommittee on Prevention of Torture and National Preventive Mechanisms: In Search for Equilibrium*. Netherlands Quarterly of Human Rights, 31(2), 132–158. <https://doi.org/10.1177/016934411303100202> p. 136

³⁰³ Evans, Malcolm. (2011). Statement by the Chairperson of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment during the 66th session of the General Assembly, Third Committee, Item 69(a). New York. Available at: www.ohchr.org/english/bodies/cat/opcat/docs/statements/StatementSPT_Chair_to_UNGA67.docx

³⁰⁴ Steinerte, Elina. (2013). *The Changing Nature of the Relationship between the United Nations Subcommittee on Prevention of Torture and National Preventive Mechanisms: In Search for Equilibrium*. p. 137.

³⁰⁵ OPCAT. Art. 11(c) and art. 11(d).

³⁰⁶ OPCAT. Art. 11(f).

³⁰⁷ Fourth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, op.cit. note 17, at paras. 20–23; Fifth annual report of the

The SPT's engagement with NPMs can be categorized into two: engagement during visits and outside visits. In the following sections of this paragraph, we will discuss each type of cooperation in detail.

3.1.4. Engagement during visits

Currently there are 91 State Parties to the Optional Protocol. The SPT has challenges with frequency of visits due to lack of financial and human resources as explained in the previous Chapter. Here NPMs play a big role in two regards. First, NPMs themselves collect information on the situation of places of detention and improvement over time. Second, the SPT's choice of States to visit depends on working of NPMs. Countries where NPMs are not functioning well are more likely to be visited. Visa versa, if a state's NPM fulfill its mandate they are getting little chance of visiting.³⁰⁸

Initial stage of an in-country visit is gathering information on the situation, legislation, and economy of the selected country. NPMs play an important role in information gathering process. They make regular visits to places of deprivation and have more in deep knowledge about the system of the country. For this reason, cooperation of the SPT with NPMs contribute effectiveness of visit.³⁰⁹ NPM may inform the SPT about certain risks and places and themes to prioritize. It also may suggest national bodies and institutions to contact with in order to strengthening effectiveness. NPM is able to identify which national actors may contribute and help the SPT during its visit. On the

Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, op.cit. note 20, at para 17.

³⁰⁸ Steinerte, Elina. (2013). *The Changing Nature of the Relationship between the United Nations Subcommittee on Prevention of Torture and National Preventive Mechanisms: In Search for Equilibrium*. p. 153

³⁰⁹ Subcommittee on Prevention of Torture. (9 December 2010). Guidelines on National Preventive Mechanisms. UN Doc CAT/OP/12/5. para 16. Retrieved from:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/OP/12/5&Lang=en

other hand, NPMs can get advice about functioning, budgets, and some particular cases during visit preparation process for their own improvement.³¹⁰

After the preparation stage, the SPT carry out its visit. Usually, at the beginning of the visit the SPT holds an initial meeting with NPM. This meeting aims to share and discuss the plan made by the SPT and open to modifications and comments by NPM. National mechanisms are more comprehensive about the situation, culture, legislation, and themes of the detention places in their states. This has particular importance in this regard. The SPT cannot have full knowledge about all the State Parties. So NPM assists the SPT to improve the plan by modifying it. Discussions with NPMs continue during the whole visit occasionally. Those meetings benefits both NPMs and the Subcommittee to facilitate their works. NPMs may also join to the final discussion with the State authorities.³¹¹

NPM-SPT cooperation in the context of in-country visits does not end with the ending of the visit. NPMs may conduct follow-up. In practice, one of the most problematic issues after in-country visit is reprisals. NPMs may play a very important role for preventing reprisals in places visited by the SPT. According to UN Guidelines against Intimidation or Reprisals (“San José Guidelines”), everyone is free from reprisals and cannot be subjected any kind of mistreatment because of their contact with treaty bodies. It is states’ responsibility to prevent it.³¹² However, actors that can contribute to prevention of reprisals is not limited to states. NPMs have more potential to actually affect the situation in the country. After the visit many countries are not willing to share SPT report publicly. NPMs may encourage authorities to make reports public and benefits from it.³¹³

³¹⁰ Interaction with the SPT | Association for the Prevention of Torture. (n.d.).

<https://www.apr.ch/en/knowledge-hub/npm-toolkit/engaging-others/interaction-spt>

³¹¹ Ibid.

³¹² Twenty-seventh meeting of chairpersons of the human rights treaty bodies Guidelines against Intimidation or Reprisals (“San José Guidelines”). HRI/MC/2015/6. (30 July 2015). paras. 5(b) and 5(c).

Retrieved from:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=FhOD6sgqgzAhFXD9F%2FeKaHS27qvpCh e6dsIpF%2FUJwxlT1COp6pApv%2FKS4sCgBIC1dCOEV43rwH1wkdiQZvdiUPFKSS4A2LtO7g1gkxIL OHgXBOKsf5U0G2pTrt8AZnlZ>

³¹³ Interaction with the SPT | Association for the Prevention of Torture. (n.d.).

<https://www.apr.ch/en/knowledge-hub/npm-toolkit/engaging-others/interaction-spt>

A question arises regarding follow-up of country visits, how the Subcommittee can monitor implementation of its recommendations to the state. Considering human and financial resources of the SPT, we can say that it cannot follow-up if a state implements the recommendations or not. NPMs assist the SPT in this regard and monitor state's implementation process. Recommendations also can be about improvement of NPMs, for instance about budget of an NPM.³¹⁴ The benefits are both sided: NPMs benefit the SPT in its work and the SPT helps NPMs for its improvement.

3.1.5. Engagement outside visits

NPMs are independent bodies from states and the SPT. However, the SPT can comment on their works about if they comply with requirements of the OPCAT, they are effective, their strategy works, do they engage with the SPT, and do they use funds appropriately. It does not mean the SPT has mandate on NPMs. These recommendations are in favor of effectiveness and positive development of NPMs, not for blaming them for failure of their functioning.³¹⁵ Article 16 of the Optional Protocol does not oblige the SPT to make recommendations, it is noted that it can recommend and share its observations “if relevant”.³¹⁶ The SPT can make comments on NPMs to State Party and directly to NPM itself and must not act as auditor or supervisor. Its role is to assist to work of NPM in order to improve effectiveness of the system.³¹⁷

Outside of in-country visits the SPT cooperate with NPMs for the purpose of strengthening their functioning and protection of people deprived of their liberty. In this context there are four types of cooperation which NPMs benefit from: assistance, advice,

³¹⁴ Ibid.

³¹⁵ Murray, Rachel. (2008). *National Preventive Mechanisms under the Optional Protocol to the Torture Convention: One Size Does Not Fit All*. Netherlands Quarterly of Human Rights, 26(4), 485–516. <https://doi.org/10.1177/016934410802600402>

³¹⁶ OPCAT. Art. 16(1).

³¹⁷ Steinerte, Elina. (2013). *The Changing Nature of the Relationship between the United Nations Subcommittee on Prevention of Torture and National Preventive Mechanisms: In Search for Equilibrium*. p.154

training, and technical assistance.³¹⁸ Assistance by the SPT includes help to improve functioning, interpret an article of the OPCAT by request of NPMs, provide help in particular cases and issues. Assistance may be indirectly. For example, Guidelines on national preventive mechanisms gives directions to NPMs in order to be able to comply with the Optional Protocol. The SPT also assist State Parties to establish, designate or maintain national preventive mechanisms. Advising function, on the other hand, helps NPMs in improvement of effectiveness and shows the right track for them. Training and technical assistance is crucial for newly built NPMs which do not have much experience in the field. This may also be through the treaty body capacity-building program of the Office of the United Nations High Commissioner for Human Rights.³¹⁹

SPT and NPM can contact by oral and written communication. An SPT member may participate in national actions ant through regional meetings. But mainly national preventive mechanisms get into communication in SPT meetings in Geneva.³²⁰

3.1.6. Challenges to cooperation

Although, in theory it seems perfect mutual benefits of NMPs and the SPT, however in practice it is not possible to say that the SPT gives priority to engage with NPMs in many cases. It chooses rather its own safe area like for the choice of places to visit than places suggested by NPMs.³²¹

On the other hand, NPMs are not remarkable in the fulfilment of the OPCAT criteria. They do not fit international arena. In some cases, the SPT can address issues related to

³¹⁸ Subcommittee on Prevention of Torture. (January 15, 2019). Rules of procedure: Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Rule 42.

³¹⁹ Ibid. Rule 42.3.

³²⁰ Interaction with the SPT | Association for the Prevention of Torture. (n.d.-b).

<https://www.ap.t.ch/en/knowledge-hub/npm-toolkit/engaging-others/interaction-spt>

³²¹ Murray, Rachel. (2008). *National Preventive Mechanisms under the Optional Protocol to the Torture Convention: One Size Does Not Fit All*. p. 516.

NPMs to State Party, but in other cases where NPMs are independent from State Party the SPT cannot oblige them to follow its advice.³²²

³²² Murray, Rachel. (2008). *National Preventive Mechanisms under the Optional Protocol to the Torture Convention: One Size Does Not Fit All*. p. 515

3.2. Committee against Torture (CAT)

Committee against Torture (CAT) is one of ten core human rights treaty bodies. It was created in 1987 and began to function in 1988 for monitoring implementation of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.³²³ The Committee consist of 10 experts for four years term who can re-elect by State Parties by secret bullet. Experts must be nationals of State Parties to Convention against Torture.³²⁴

The CAT established four mechanisms to carry out its work: *state reports, individual complaints, in-state complaints, and inquiries*. The main mechanism of the CAT is state reports. States who are party to the Convention against Torture must submit a report in every four years. The first report of a State should be within one year of its ratification of the Convention.³²⁵ Reports must be submitted through the Secretary-General of the United Nations. As main purpose of the Committee is to guarantee implementation of the Convention and follow-up State Parties' development in prevention of torture and ill-treatment, report include what developments have been observed regarding implementation of the CAT during four-year period in a particular state.³²⁶ The Committee holds three meetings which are four week long in April-May, July-August and November-December in a year.³²⁷ In these sessions, States which has not yet submitted the report are being reported by the Secretary-General of the United Nations to the Committee. In case of non-submission, the CAT reminds the State Party about the issue. Reports must include information on particular issues and structured as demanded.

³²³ UN Office of the High Commissioner for Human Rights (OHCHR). (2012). The United Nations Human Rights Treaty System, Fact Sheet No. 30/Rev.1. UN New York and Geneva. p. 20. Retrieved from: <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet30Rev1.pdf>

³²⁴ UN Office of the High Commissioner for Human Rights (OHCHR). (1992). *Fact Sheet No. 17, The Committee against Torture*, No. 17, available at: <https://www.refworld.org/docid/4794773d2.html> [accessed 26 January 2023]

³²⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Art. 19.

³²⁶ UN Office of the High Commissioner for Human Rights (OHCHR), Fact Sheet No. 17.

³²⁷ OHCHR. (n.d.-b). CAT- Introduction. <https://www.ohchr.org/en/treaty-bodies/cat/introduction>

There is a guideline for State Reports which include all instructions and content needed in order to inform the Committee fully.³²⁸

Following the submission of reports, the Committee enters into a review period during which it reviews the report with the State Party's delegation. During the meeting, the representatives may be asked questions in order to clarify any issues raised in the report. These questions should be sent to the State Party ahead of time to allow them to prepare which may take time to investigate or research.³²⁹ At the conclusion of the meeting, the Committee may issue general comments on the report and send them to the relevant State Party.³³⁰

The Committee may also consider individual complaints made by individuals whose rights under the Convention against Torture were violated by a State Party. An individual can make complaint against a State Party when it declared under Article 22 of the Convention that it recognizes the competence of the Committee to receive a complaint by an individual under its jurisdiction. Otherwise, the Committee will not consider the complaint.³³¹ Another case when the CAT cannot consider a complaint is when it has already been or being examined under other international investigation. The complainant must have exhausted all available domestic remedies in order to be able to make a complaint.³³² As 2023 January, out of 173 parties to the Convention 69 of them recognized individual complaints procedures for CAT, Art.22.³³³

Individual complaints process can be divided into three stages. First stage is admissibility of complaint. In this stage the Committee creates a working group maximum of five people consist of from its members. The group examines if the case is admissible on basis

³²⁸ UN Office of the High Commissioner for Human Rights (OHCHR), Fact Sheet No. 17.

³²⁹ Ibid.

³³⁰ CAT. Art. 19(3).

³³¹ CAT. Article 22.

³³² Gorlick, Brian. (1999). *The Convention and the Committee Against Torture: A Complementary Protection Regime for Refugees*. International Journal of Refugee Law, 11. p. 482.

³³³ UN Treaty data base:

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=141&Lang=EN

of the Convention against Torture and the Committee's rules of procedure.³³⁴ According to the Convention there are four rules as follows:

1. Complaint must not be anonymous;³³⁵
2. Complaint should be compatible with the provisions of this Convention;³³⁶
3. Complaint cannot constitute an abuse of the right to submit a communication under article 22;³³⁷
4. The issue of complaint is not or has not been under another procedure of international investigation;³³⁸
5. All available domestic remedies must be exhausted.³³⁹

After the examination of admissibility of the communication, the Committee declares if it is admissible or inadmissible. In case of inadmissibility, the Committee informs people concerned. It is also possible to consider the communication later when the reasons for inadmissibility no longer apply.³⁴⁰ If the case is admissible the next stage is consideration of merits where the Committee sends its decision to the State Party. Then the State Party needs to reply to the decision and clarify the case within six months. The Committee holds a meeting about the complaint and the State representative and author of the communication may also be invited. Meetings are held closed.³⁴¹

The last stage of individual complaints is the concluding stage where the Committee decides on the complaint. In the end, the State Party concerned gets informed. In its annual report the Committee includes the summary of communications examined.³⁴²

To effectively carry out its assigned duties, it is crucial for the Subcommittee to maintain active collaborations with other United Nations organizations, whether conventional or

³³⁴ UN Office of the High Commissioner for Human Rights (OHCHR). Fact Sheet No. 17.

³³⁵ CAT art. 22(2).

³³⁶ Ibid.

³³⁷ Ibid.

³³⁸ CAT. Art. 22(4)(a).

³³⁹ CAT. Art. 22(4)(b).

³⁴⁰ UN Office of the High Commissioner for Human Rights (OHCHR). Fact Sheet No. 17.

³⁴¹ Ibid.

³⁴² Ibid.

non-conventional. In particular, there is a growing need for close cooperation with the CAT and the Special Rapporteur on Torture, by exchanging non-confidential information for the preparation of upcoming visits to various countries. The SPT should also continue to endorse joint statements on topics of mutual interest.³⁴³ For instance, The United Nations General Assembly declared 26 June as the United Nations International Day in Support of Victims of Torture on 12 December 1997, according to resolution 52/149. This day serves as a platform to encourage all parties, including UN Member States, civil society, and individuals worldwide, to come together in support of the countless individuals who have suffered from torture and those who are still subjected to torture today.³⁴⁴ On the occasion of the seventieth anniversary of the Universal Declaration of Human Rights, the SPT, along with the CAT, and two international and three other regional human rights organizations collaborated to hold the "United Nations International Day in Support of Victims of Torture" on June 26, 2018. The ultimate goal of this joint effort was to promote the cause of eliminating torture around the world and establishing a world free from this heinous crime.³⁴⁵

Despite some accomplishments, there are still numerous tasks that need to be addressed. It is crucial to encourage regular gatherings among various international mechanisms, particularly with the CAT and SR on Torture. These meetings should be conducted with a clear and specific agenda, which can assist in achieving tangible outcomes. The modes of collaborative work, follow-up strategies for their conclusions, and recommendations are some of the issues that require exploration.³⁴⁶ The SPT and CAT must work together to optimize the financial and personnel resources that the UN provides to both treaty bodies.

³⁴³ Gonzalez, Pinto. The United Nations Subcommittee on Prevention of Torture. p. 153.

³⁴⁴ OHCHR. (n.d.-a). International Day in Support of Victims of Torture, 26 June.

<https://www.ohchr.org/en/about-us/funding-and-budget/trust-funds/united-nations-voluntary-fund-victims-torture/international-day-support-victims-torture-26-june>

³⁴⁵ UNCAT, SPT, UNSRT, and UN Voluntary Fund for Victims of Torture. (2020). Joint Statement on call for action on: UN International Day in Support of Victims of Torture. Retrieved from:

https://www.ohchr.org/sites/default/files/Documents/Issues/Torture/IntDay/2018/JointStatement_EN.pdf

³⁴⁶ Gonzalez, Pinto. (2016). *Ninguna forma de violencia contra las personas privadas de libertad es justificable y toda violencia es prevenible*. Available at:

https://www.ohchr.org/Documents/HRBodies/OPCAT/Anniversary/Speechesat10/Ms.%20Lorena%20Gonzalez%20Pinto_Panel2.docx

In circumstances that require immediate action, it is imperative to facilitate virtual meetings among SPT members and different committees. Additionally, the SPT should maintain partnerships with national and international civil society organizations and academic institutions during their visits and in their efforts to promote and support the OPCAT.³⁴⁷

In summary, it is crucial to encourage regular gatherings, have clear agendas, explore modes of collaborative work, and optimize resources. Follow-up strategies and recommendations must also be explored and implemented. The SPT and CAT should work together, facilitate virtual meetings when needed, and maintain partnerships with civil society organizations and academic institutions. By implementing these measures, progress will be made towards preventing torture and ensuring human rights are respected.

³⁴⁷ Gonzalez, Pinto. The United Nations Subcommittee on Prevention of Torture. p. 158.

3.3. Committee for the Prevention of Torture (CPT)

The CPT has been established in line with the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment. The committee proactively monitors various locations where individuals may be deprived of their liberty, including prisons, psychiatric facilities, and social care homes.³⁴⁸ The CPT conducts periodic and ad hoc on-site visits to member states to monitor these locations. After each visit, the CPT sends a visit report to the relevant member state, containing its findings and recommendations. If the member state agrees, the report is made publicly available.³⁴⁹

Although the CPT's recommendations are not legally binding, the committee is a crucial voice in the human rights debate concerning residential care. The CPT and other authoritative bodies within the Council of Europe are communicating vessels, and the committee plays an important role in the interpretation of articles of the European Convention on Human Rights, particularly Article 3 on torture and inhuman and degrading treatment. For example, European Court of Human Rights case of *Bures v. the Czech Republic* (18 October 2012) refers to the CPT visit.³⁵⁰ On the other hand, the *Standards of the CPT on Means of Restraint in Psychiatric Establishments for adults* (2017) refers to the case of *Bures*.³⁵¹

The CPT's reporting system generates multiple reports, often containing similar recommendations. To address this, the committee has developed "standards" that present its main recommendations on a given theme. The country reports and standards mutually enrich each other. The standards are fueled by the recommendations in the country

³⁴⁸ European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Art. 2.

³⁴⁹ Opgenhaffen, Tim; & Put, Johan. (2022). *Means of restraint in residential care when there is no acute danger. Time for the European committee on the prevention of torture to set the standard*. International Journal of Law and Psychiatry, Volume 83, 2022, 101807, ISSN 0160-2527, p. 2. Available at: <https://doi.org/10.1016/j.ijlp.2022.101807>

³⁵⁰ *Bures v. Czech Republic*. (2012). European Court of Human Rights. Case no. 37,679/08. Paras. 88–106. Retrieved from: <https://www.globalhealthrights.org/bures-v-the-czech-republic/>

³⁵¹ Council of Europe: Committee for the Prevention of Torture, *Means of restraint in psychiatric establishments for adults (revised CPT standards)*, 21 March 2017, CPT/Inf(2017)6, para. 2. Available at: <https://www.refworld.org/docid/58d14c524.html> [accessed 27 February 2023]

reports, but are also referred to in the country reports to clarify the CPT's position. Overall, the CPT's work is critical in promoting and protecting human rights in Europe.³⁵²

The CPT plays a crucial role in the European legal framework regarding prisoners' rights. This human rights monitoring body was established in 1987 through the ECPT, which has been ratified by all 47 member states of the Council of Europe.³⁵³ The CPT's mandate is to monitor the treatment of individuals who have been deprived of their liberty and take steps to ensure that they are protected from torture and inhuman or degrading treatment or punishment.³⁵⁴

The CPT conducts visits to all member states of the Council of Europe and any other locations where individuals are deprived of their liberty by a public authority.³⁵⁵ Although the CPT is not a judicial entity, its purpose is to prevent violations of Article 3 of the ECPT through its monitoring activities. These activities include visiting detention facilities, engaging in state dialogue, and reporting on its findings to prevent ill treatment and poor conditions.³⁵⁶

In addition to its visits and reporting activities, the CPT also participates in high-level discussions with government officials. In rare instances, the CPT may issue public statements when states fail to make improvements in the treatment and conditions of those deprived of their liberty.³⁵⁷

³⁵² Oopenhaffen, Tim; & Put, Johan. (2022). *Means of restraint in residential care when there is no acute danger. Time for the European committee on the prevention of torture to set the standard.* p. 2.

³⁵³ Council of Europe: Committee for the Prevention of Torture. (8 March 2011). *The CPT standards*, CPT/Inf/E (2002) 1 - Rev. 2010, available at: <https://www.refworld.org/docid/4d7882092.html> [accessed 27 February 2023]

³⁵⁴ ECPT. Art 1.

³⁵⁵ ECPT. Arts. 2, 8(1).

³⁵⁶ Moore, Linda, & Scranton, Phil. (2016). *Doing gendered Time: The harms of women's imprisonment.* In Jewkes Yvonne; Crewe, Ben; & Bennett, Jamie (Eds.), *Handbook on Prisons* (2nd ed., pp. 549–567). London: Routledge.

³⁵⁷ Murdoch, Jim. (2006). *Tackling ill-treatment in places of detention: The work of the Council of Europe's "Torture Committee."* *European Journal of Criminal Policy Research*, 12, pp. 121–142. <https://doi.org/10.1007/s10610-006-9011-6>.

The CPT conducts two types of visits: periodic visits, where the state is given advance notice of the visit one year prior, and ad hoc visits, which take place with little to no notice.³⁵⁸ All member states of the Council of Europe undergo a periodic visit every four to five years, while ad hoc visits are conducted as necessary in response to specific concerns in an institution or when a location requires immediate attention.³⁵⁹

Reports from the CPT and government responses to these reports are kept confidential unless the state consents to their public release. The CPT provides its assessment and observations in the form of three types of statements, each carrying a different level of significance. These statements include:

- i. a comment highlighting a particular situation,
- ii. a request for information from state authorities regarding an observation made during a visit,
- iii. a formal recommendation to officials to modify a practice or situation.³⁶⁰

The Convention specifies that the CPT's primary duty is to prevent torture, however it is not authorized to make judgments or punish those who violate European laws against torture. Despite this, the CPT has been given specific powers to carry out its functions effectively.

One of the primary functions of the CPT is to conduct periodic visits to places of detention in the States Parties' territory, as stated in Article 7 of the Convention.³⁶¹ The Committee can also carry out surprise visits if the circumstances warrant them. Since its establishment in 1989 until 2022, the CPT has conducted a total of 502 visits to places of detention.³⁶²

³⁵⁸ ECPT. Art. 7

³⁵⁹ Moore, Linda, & Scranton, Phil. (2016). *Doing gendered Time: The harms of women's imprisonment*.

³⁶⁰ O'Connell, Ciara, Aizpurua, Eva. & Rogan, Mary. (2021). *The European committee for the prevention of torture and the gendered experience of imprisonment*. *Crime Law Soc Change* 75, 445–468. Available at: <https://doi.org/10.1007/s10611-021-09938-1>

³⁶¹ ECPT. Art. 7.

³⁶² Council of Europe. (website.). CPT visits. <https://www.coe.int/en/web/cpt/visits>

During these visits, the CPT is authorized to request assistance from experts such as doctors. The Committee has been granted relatively extensive powers, as outlined in Article 8 of the European Torture Convention. These powers include the right to access States Parties' territory and to travel without restrictions. The CPT is entitled to receive full information on the location where individuals are being held and unlimited access to any place of detention, including the right to move freely inside such places.³⁶³

Additionally, the Committee has the authority to ask for any other pertinent information that the State Party has and that is necessary for the successful fulfillment of its responsibilities. Furthermore, the CPT is permitted to conduct private interviews with persons who are being held in custody and can freely communicate with anyone who it believes can provide valuable information to carry out its tasks.³⁶⁴

Article 1 of OPCAT states that the primary objective of the OPCAT is to establish a system of routine visits by independent international and national bodies to places where people are being held in custody, with the aim of preventing torture and other forms of cruel, inhuman, or degrading treatment or punishment.³⁶⁵ The OPCAT's main focus is on the prevention of torture and inhumane or degrading treatment or punishment of individuals deprived of their liberty. Its purpose is not to penalize acts of torture or inhumane treatment, but rather to prevent them from happening in the first place. The Optional Protocol aims to accomplish this objective through non-judicial means of a preventive character based on visits, as stated in its preamble. Like the ECPT, the OPCAT does not establish new human rights standards but rather strives to enhance compliance with existing ones.³⁶⁶

³⁶³ ECPT. Art. 8.

³⁶⁴ Doctors without borders | The Practical Guide to Humanitarian Law. (n.d.). Retrieved from: <https://guide-humanitarian-law.org/content/article/3/european-committee-for-the-prevention-of-torture-cpt/>

³⁶⁵ OPCAT. Art.1.

³⁶⁶ De Beco, Gauthier. (2011). The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the OPCAT) in Europe: Duplication or Reinforcement?. p. 261

The OPCAT establishes a two-part system: firstly, it establishes the SPT, and secondly, it requires that states parties create or designate national preventive mechanisms.³⁶⁷

The SPT is modelled on the CPT³⁶⁸ and consists of 25 experts who act in an individual capacity.³⁶⁹ Similar to the SPT, the CPT must have unrestricted access to all detention facilities under the jurisdiction of the states parties, without the need for prior consent.³⁷⁰ The CPT also requires access to information about the number of detainees and their treatment, as well as their conditions of detention.³⁷¹ Once its visit is complete, the SPT makes recommendations on the protection of detainees against torture and other cruel or degrading treatment. The reports of the SPT and CPT are confidential³⁷², unless the state party decides otherwise.³⁷³ If states parties refuse to cooperate with the SPT, the CAT may choose to make a public statement or publish the report at the request of the SPT.³⁷⁴ While the reports of the CPT are usually made public by states parties to the ECPT, the principle of confidentiality remains an important aspect of their obligation to cooperate with the CPT.³⁷⁵

The OPCAT differs from the ECPT in that it not only establishes the spt but also mandates states parties to establish or designate national preventive mechanisms within a year of ratifying the optional protocol. The composition of these mechanisms is not predetermined, but the states parties must follow the Paris Principles, which provide

³⁶⁷ OPCAT. Arts. 3 and 17.

³⁶⁸ Ledwidge, Frank. (2006). *The optional protocol to the convention against torture (opcAt): A Major step Forward in the Global prevention of torture*. 17 Helsinki Monitor 1. pp. 74–75.

³⁶⁹ OPCAT. Art. 5, para. 1.

³⁷⁰ OpcAT. Arts. 4 and 14, para. (1) (c).

³⁷¹ OPCAT. Arts. 14, para. (1) (a) and 14, para. (1) (b).

³⁷² ECPT. Art. 11, para. 1; OPCAT Art. 16, para. 1.

³⁷³ ECPT. Art. 11, para. 2; OPCAT. Art. 16, para. 2.

³⁷⁴ OPCAT. Art. 16, para. 4.

³⁷⁵ Kicker, Renate. *The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (The CPT)* in G. de Beco (ed.). (2013). *Human Rights Monitoring Mechanisms of the Council of Europe*. Routledge. ISBN 9780415859493. p. 53.

guidance on the responsibilities, structure, and functioning of national human rights institutions.³⁷⁶

Since both bodies have many in common, it is important to compare and find distinctions between the CPT and SPT in order to determine if these two mechanisms overlap. The primary distinction between the OPCAT and ECPT is that the former is a worldwide agreement, while the latter is regional. As a result, the SPT is tasked with a larger number of state parties to visit than the CPT. Moreover, the number of SPT members is significantly lower than that of the CPT since the CPT has one member per state party, totaling 47 members, whereas the SPT has the potential to cover all UN Member states. Consequently, the CPT has greater resources at its disposal than the SPT, despite the fact that there are fewer states parties to the ECPT than to the OPCAT.³⁷⁷ This implies that only the CPT will be able to visit all European states frequently. Another disparity is that CPT members can be re-elected twice³⁷⁸, while SPT members can only be re-elected once³⁷⁹, which is challenging to explain because experience is advantageous for the members.

The most significant contrast between the OPCAT and the ECPT lies in the fact that solely the former requires states parties to create or assign national preventive mechanisms, while the latter does not entail any such obligation.³⁸⁰ The most notable advantage of ratifying the OPCAT for European nations is that it mandates them to establish visitation mechanisms that will continue the work of the CPT and the SPT on

³⁷⁶ De Beco, Gauthier. (2011). The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the OPCAT) in Europe: Duplication or Reinforcement?. p. 262.

³⁷⁷ De Beco, Gauthier. (2007). *Le protocole facultatif à la convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants du 18 décembre 2002: l'instauration de mécanismes de visites des lieux de détention au niveau national et international*. *Revue belge de droit international* 2. pp. 419–420.

³⁷⁸ ECPT. Art. 5.

³⁷⁹ OPCAT. Art. 9.

³⁸⁰ University of Bristol. (2009). *Relationship between the Optional Protocol to the UN Convention against Torture (OPCAT) and other international and regional visiting mechanisms*. p. 6. Available at: www.bris.ac.uk/law/research/centresthemes/opcat/opcatdocs/relationshipopcatandothervisitingmechanisms.pdf

the national level. National preventive mechanisms play a crucial role since they are more closely linked to local realities and possess greater capacity to examine detention facilities under the jurisdiction of the state parties than both the SPT and the CPT.³⁸¹

There are several differences between the OPCAT and the ECPT, two of which have implications for how their respective tasks are shared. The first difference pertains to the way in which the countries to be visited by the SPT and the CPT are determined by the OPCAT and the ECPT, respectively. Specifically, the SPT has to establish its programme of visits "at first by lot,"³⁸² whereas the CPT has no such requirement. While this approach ensures equal treatment of all states parties, it also means that the SPT may not visit certain states parties for a long time. This limitation prevents the SPT from focusing on those states in which torture or inhuman or degrading treatment or punishment are known to occur, or those regions without a regional visiting mechanism.³⁸³

The second difference concerns ad hoc visits to states parties. The CPT is authorized to conduct ad hoc visits to states parties when circumstances require, which allows it to adjust its program of visits accordingly. Ad hoc visits have become a critical component of the CPT's work, with approximately half of its available time devoted to them.³⁸⁴ In contrast, the SPT can only "propose a short follow-up visit after a regular visit."³⁸⁵ The visit must follow a regular visit, be brief, and be agreed upon with the concerned state. This further limits the SPT's flexibility and prevents it from intervening in exceptional circumstances.³⁸⁶

³⁸¹ De Beco, Gauthier. (2007). *Le protocole facultatif à la convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants*. 2. p. 413.

³⁸² OPCAT. Art. 13, para. 1.

³⁸³ De Beco, Gauthier. (2011). The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the OPCAT) in Europe: Duplication or Reinforcement?. p. 264

³⁸⁴ Kicker, Renate. *The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (The CPT)*. p. 59.

³⁸⁵ OPCAT. Art. 13, para. 4.

³⁸⁶ De Beco, Gauthier. (2011). The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the OPCAT) in Europe: Duplication or Reinforcement?. p. 264

Although the SPT and the CPT have similar mandates to prevent torture and inhuman or degrading treatment or punishment against persons in detention, there are differences between them. However, the difference between the OPCAT and the ECPT could be used to complement their mandates.³⁸⁷ The OPCAT is the only treaty that requires the establishment or designation of national preventive mechanisms, and it also defines the role of the SPT in relation to these mechanisms. The SPT's guidance on the establishment and strengthening of these mechanisms is important since this is the primary focus of states that have ratified or plan to ratify the OPCAT. Given the small resources of the SPT compared to the growing number of states that have ratified the OPCAT, it may be necessary for the SPT to concentrate on giving guidance to states on the establishment and strengthening of these mechanisms.³⁸⁸ Meanwhile, the CPT could continue to visit places of detention as it has been doing since its establishment. Thus, while the SPT could focus on the establishment and strengthening of national preventive mechanisms in European states, the CPT could continue to visit places of detention to prevent torture and inhuman or degrading treatment or punishment against persons deprived of their liberty. Although there is a potential overlap in their mandates, the difference in their roles could allow them to complement each other in their efforts to prevent torture and inhuman treatment or punishment against persons in detention.³⁸⁹

Article 31 of the OPCAT stipulates that the SPT and the CAT should engage in consultation and collaboration to prevent redundancy and effectively advance the goals of the OPCAT. Failure to work in tandem could jeopardize the credibility of both entities and result in duplication, which would be a wasted opportunity given their overlapping mandates.³⁹⁰

³⁸⁷ Ibid. pp. 265-266

³⁸⁸ Kicker, Renate. (2007). *The european convention on the prevention of torture compared with the United Nations convention Against torture and its optional protocol* in G. Ulfstein (ed.), *Making Treaties Work. Human Rights, Environment and Arms Control*. Cambridge University press, Cambridge. p. 99–100.

³⁸⁹ De Beco, Gauthier. (2011). *The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the OPCAT) in Europe: Duplication or Reinforcement?*. p. 265

³⁹⁰ OPCAT. Art. 31.

To reinforce one another, it is advisable for both the Subcommittee and the Committee to engage in cooperation through information exchange, experience sharing, and coordinated visits. Specifically, the SPT and CPT could communicate at various stages of their visits to states parties of both the OPCAT and the ECPT. By informing each other of the states they intend to visit and consulting on their visit programs, they could adapt their schedules and avoid overlapping visits, which would be a source of embarrassment. Given that the CPT has more flexibility, it is likely that it would adjust its visit schedule to avoid simultaneous visits with the SPT. Furthermore, the SPT and CPT could share information gathered during their visits to states parties, such as problems encountered in detention facilities or issues discussed with detainees.³⁹¹

Sharing reports between the Subcommittee and the Committee would prevent contradictory statements to states parties of both the Optional Protocol and the ECPT. Such statements would present different interpretations of torture and other inhumane and degrading treatment and punishment to states, which could be problematic.³⁹² Additionally, sharing reports would facilitate the follow-up to recommendations, as exemplified by the CPT's implementation of the SPT's recommendations in its report on Sweden. The SPT and CPT could also adjust their visits by either visiting different detention facilities or revisiting previously identified problematic facilities. The SPT's report sharing is especially important since it has fewer opportunities to visit European states and follow up on recommendations. It is crucial for the CPT to provide information on national preventive mechanisms to the SPT so that it can fulfill its role regarding these mechanisms by providing guidance to states on their establishment or strengthening. Cooperation on this matter will be critical as both the SPT and CPT will need to rely on national preventive mechanisms.³⁹³

³⁹¹ De Beco, Gauthier. (2011). *The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the OPCAT) in Europe: Duplication or Reinforcement?*. p. 268

³⁹² University of Bristol. (2008). *OPCAT Regional Seminar: OPCAT in the OSCE Region. Summary and recommendations*. p. 3. Retrieved from: www.bris.ac.uk/law/research/centresthemes/opcat/opcatdocs/prague2008/proceedingspraguenovember2008.pdf

³⁹³ De Beco, Gauthier. (2007). *Le protocole facultatif à la convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants*. p. 434.

The SPT and CPT should be strategic in their visits. Given their limited resources, it would be beneficial for them to collaborate and agree on which areas to focus on during their visits. It is particularly important to avoid duplication of efforts due to the SPT's limited resources.

The SPT is recommended to focus on establishing and strengthening national preventive mechanisms, while the CPT should continue visiting detention facilities to prevent torture and inhumane treatment against people deprived of liberty in European states. Both groups should ideally not visit the same country at the same time, leaving a one-year interval between visits to allow for cross-referencing of recommendations,³⁹⁴ as demonstrated in the case of Sweden. The SPT visited Sweden in 2008, focusing on both national preventive mechanisms and places of detention. Its report recommended changes for the protection of persons deprived of liberty against torture and other inhumane treatment, which were later referred to by the CPT in its 2009 report.³⁹⁵ Sharing reports would help the SPT and CPT ensure follow-up to their recommendations, and they could also adapt their visits to re-visit problematic places of detention. Given the limited opportunities for the SPT to visit European states, sharing reports is especially important for checking the implementation of its recommendations.³⁹⁶

However, joint visits could be beneficial if they are the result of close collaboration between the SPT and the CPT. During these visits, the two groups could divide their tasks, with the SPT focusing on national preventive mechanisms and the CPT visiting detention facilities. Joint visits could also result in joint reports, maximizing the chances of avoiding duplication of effort.

³⁹⁴ University of Bristol, *OPCAT Regional Seminar: OPCAT in the OSCE Region. Summary and recommendations*. p. 3.

³⁹⁵ CPT conference. (2009). *New partnerships on Torture Prevention in Europe. Background paper*. p. 16. Retrieved from: www.ap.t.ch/region/eca/Backgroundcpt20.pdf

³⁹⁶ First Annual report on the visit of the Subcommittee on Prevention of Torture. (2008). p. 27.

CONCLUSION

The SPT was established under the OPCAT as a means of executing in-country visits to member states, with the ultimate goal of evaluating the conditions prevalent in places of detention within their jurisdiction and provide recommendations to the concerned authorities regarding necessary steps to improve the existing situation. The SPT does not operate on a "blame and shame" model, rather its goal is to assist member states in adhering to the OPCAT provisions, thereby preventing instances of torture and inhumane treatment. In theory, the SPT's objectives and activities have the potential to produce beneficial outcomes by reducing instances of torture, assuming that governments implement its proposals. Nonetheless, the SPT faces various obstacles in practice that obstruct its ability to effectively prevent torture.

The OPCAT has been ratified by 90 states and is the first international agreement that legally obligates specific commitments to the prevention of torture. As a part of this powerful agreement, the SPT is a primary instrument and has numerous rights that other human right bodies do not have. To achieve its mandate, the SPT relies heavily on conducting state visits, but this approach can be hindered by a range of factors. Despite its wide range of rights and mandate, it faces several obstacles, such as a shortage of human and financial resources, restrictions on accessing institutions or interviewees imposed by states, and limited number of visits and meetings possible.

This paper conducted an in-depth analysis of the difficulties facing the SPT in carrying out its mandate, by analysing its mechanisms and practical experiences. The main focus of the research was to provide a comprehensive understanding of the reasons why these challenges need to be addressed. The central inquiry of the study was whether the SPT is capable of achieving its objectives, and what are the obstacles to its effectiveness. After the research we can come to this conclusion that if governments continue to deny access to institutions or interviewees, or the UN fails to provide sufficient funding, the SPT will not be able to effectively pursue its mandate. To ensure that the SPT can fulfil its mandate from the international community, it is essential to overcome these obstacles without delay.

In order to gain a deeper understanding of the subject, it is crucial to thoroughly examine the system and mechanism of this particular human rights instrument. The mechanism of the SPT involves conducting visits to places of detention in member states to assess the treatment of detainees and identify any human rights violations or risks of torture. During the visits, the SPT team meets with authorities, staff, and detainees to gather information and assess the overall situation. Based on their findings, the SPT makes recommendations to the state to take measures to improve the situation, including changes to laws and regulations, improvements in conditions of detention, and training for authorities and staff.

In addition to visits, the SPT also engages in ongoing dialogue with member states to provide advice and guidance on implementing the provisions of the OPCAT, which establishes the mandate of the SPT. The Subcommittee also conducts follow-up visits to assess whether the state has implemented the recommended measures and to evaluate the effectiveness of its actions.

The SPT's approach is based on a "preventive" model, focusing on identifying and addressing risks of torture and ill-treatment before they occur. The Subcommittee's mechanism is therefore aimed at promoting a culture of prevention in which states are proactive in identifying and addressing potential risks and violations of human rights.

This mechanism was proposed by Jean-Jacques Gautier. His idea was to create a mechanism that would inspect places where people were deprived of their liberty to prevent torture. The Swiss Committee against Torture requested a draft Convention Concerning the Treatment of Prisoners Deprived based on Gautier's idea, and in 1977, a group of experts gathered these ideas in one convention. In 1980, Costa Rica submitted a first draft of the Optional Protocol, but it was not examined until the CAT was adopted. In 1991, Costa Rica submitted a new draft, and the OPCAT was finally adopted by the UN General Assembly in 2002. The OPCAT builds on the CAT and helps states meet their obligations under it. State parties agree to establish a NPMs for inspections of all

places of detention and to allow for international inspections by the SPT. The SPT works confidentially with states and protects informers from any retaliation.³⁹⁷

What makes the SPT stand out of other human right bodies against torture and ill-treatment is wide range of rights and powers. Some of its notable rights and powers are as follow:

1. Access to all places of detention: The SPT has the right to visit any place of detention within the jurisdiction of a state party to the Optional Protocol, without prior notice. This includes prisons, detention centers, police stations, psychiatric hospitals, and any other place where people are deprived of their liberty.³⁹⁸
2. Private interviews with detainees: The SPT has the right to conduct private interviews with detainees and any other person who might have information relevant to its mandate. The SPT can also request to see any documents or records related to the treatment of detainees.³⁹⁹
3. Confidentiality and immunity: The members of the SPT have the right to complete confidentiality and immunity in the exercise of their functions. This means that they cannot be arrested, detained, or prosecuted for anything they do or say in the course of their work.⁴⁰⁰
4. Cooperation of the state: States parties to the Optional Protocol have the obligation to cooperate with the SPT and provide it with all necessary assistance to carry out its mandate. This includes granting access to places of detention, facilitating interviews with detainees, and providing any other information requested by the SPT.⁴⁰¹
5. Recommendations and follow-up: After each visit, the SPT prepares a confidential report with its findings and recommendations. The state party is required to provide a written response within six months, indicating what

³⁹⁷ De Beco, Gauthier. (2011). The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the OPCAT) in Europe: Duplication or Reinforcement?, p. 259

³⁹⁸ OPCAT, Art. 11(a).

³⁹⁹ OPCAT, Art. 14(d).

⁴⁰⁰ OPCAT, Arts. 2.3, 11(ii).

⁴⁰¹ OPCAT, Arts. 2.4, 16.4.

measures have been taken to implement the recommendations. The SPT may also make public statements or issue press releases to draw attention to situations of concern.⁴⁰²

A question arises from above-mentioned rights and powers: How the SPT may still encounter obstacles in achieving optimal effectiveness despite possessing such extensive privileges? The reason is that there are many challenges to the work of the SPT. First of all, the Subcommittee faces with human and financial resource deficit. It takes a long time for the SPT to complete reports after visits, which hinders its ability to provide advice and weakens its mandate. The limited resources also make it difficult for the SPT to visit all member states, and some visits have been canceled due to staff shortages. To improve effectiveness, the SPT needs more human resources and a broader, interdisciplinary team. Additionally, the SPT has faced financial issues that have prevented it from carrying out visits. Appropriate support from the General Assembly, the UN Office, and OHCHR could solve these problems.

Secondly, the SPT have problems in accessing immigration detention centres, particularly extraterritorial ones. The criminalization of irregular migration has made migrants more vulnerable to torture and other inhumane treatment. While states have the authority to manage entry of aliens to their territory, they are obliged to prevent torture and ensure that their policies on immigration are in line with international standards. The SPT and NPMs face obstacles in accessing extraterritorial detention centres, but the SPT has stated that sending states must ensure that their NPMs have the legal and practical capacity to visit detainees in accordance with the OPCAT and SPT guidelines. As an example, Australia's policy of detaining non-citizens in centres located in Papua New Guinea and Nauru is against the international standards and that State Parties should give the SPT and NPMs access to this kind of extraterritorial detention centres.

Our focus in this thesis is the major problem that hinders the SPT to be effective is lack of access to detention places in some states because those states may impose obstacles or restrictions on the Subcommittee's work. This can include limiting the dates and scope of visits, restricting access to certain detention facilities, prohibiting interviews with

⁴⁰² OPCAT, Arts. 11(c), 16.1.

detainees, and withholding relevant information. Such actions can be seen as a violation of the state's obligation to cooperate with the SPT as mandated by the Optional Protocol. Some states, such as Azerbaijan, Ukraine, and Rwanda, have been cited as examples of countries that have made it difficult for the SPT to access all detention places and comply with their recommendations. However, most states are willing to take the SPT seriously and comply with its recommendations.

Collaboration between instruments of human rights is a critical means to enhance the efficiency and speed of their operations, particularly in terms of exchanging information with one another. This collaboration enables the SPT to share valuable information and insights with other bodies, which ultimately results in more comprehensive and coordinated efforts to prevent torture and other forms of ill-treatment. Additionally, this cooperation allows for the exchange of best practices and knowledge, leading to the development of more effective strategies and policies to promote and protect human rights globally. The SPT cooperates closely with the CAT, CPT, and NPMs. This cooperation is essential to strengthen the global fight against torture and other forms of ill-treatment.

The SPT and CAT work together to share information on torture prevention measures, to coordinate their activities, and to conduct joint visits to detention centers in countries that have ratified the OPCAT. The SPT also collaborates with the CPT, which monitors detention conditions in European countries. The SPT and CPT share information on their respective mandates, standards, and methodologies, and conduct joint visits to detention centers.

In addition to working with international human rights bodies, the SPT also cooperates with NPMs, which are independent bodies established by states to monitor places of detention and prevent torture and other forms of ill-treatment. The Subcommittee provides guidance and technical assistance to NPMs, and works with them to conduct joint visits to detention centers. By working together with these bodies, the SPT can more effectively carry out its mandate to prevent torture and other forms of ill-treatment worldwide.

There are several challenges that hinder the cooperation of the SPT with other human rights bodies. One of the main challenges is the lack of resources, both human and financial, which can limit the ability of these bodies to effectively collaborate and share information. Also, there are differences in mandates, priorities, and working methods among the different human rights bodies, which make it difficult to coordinate their efforts. On the other hand, there are issues related to confidentiality and data protection that can complicate the sharing of information between these bodies. Furthermore, there are challenges related to the diversity of legal and cultural frameworks in different countries, which can affect the interpretation and application of human rights standards. These challenges can make it difficult for the SPT to work effectively with other human rights bodies, but they can be overcome through dialogue, cooperation, and a shared commitment to promoting and protecting human rights.

Research on the challenges faced by the SPT is significant because it helps to identify the obstacles that hinder the effective functioning of the SPT, as well as the measures that can be taken to overcome these challenges. Such research can also help to promote greater cooperation and collaboration among human rights bodies, including the SPT, the CAT, the CPT, and NPMs, thereby enhancing their effectiveness in promoting and protecting human rights. Additionally, research on the challenges faced by the SPT can help to raise awareness among policymakers, civil society organizations, and the general public about the importance of the SPT's work and the need to support its efforts to prevent torture and ill-treatment around the world.

There are some challenges to research on the work and challenges of the SPT. One of the primary challenges to researching the SPT is the limited availability of data. SPT visits to detention centers are confidential, and member states may not always provide complete information to the SPT or make their reports public. This can make it difficult to gather comprehensive data on the challenges faced by the SPT. On the other hand, there are very few scholars works on the SPT.

Research on the SPT also presents methodological challenges, as the SPT operates in different countries with different legal systems, cultures, and political contexts. This can make it difficult to compare data across different countries and contexts. Additionally,

ethical considerations must be taken into account when researching sensitive topics such as torture and detention.

The Subcommittee needs to overcome these challenges in order to be more effective. One of recommendation for a better work is strengthening partnerships and cooperation with other human rights bodies, such as the CAT, CPT, and NPMs, to improve the effectiveness and efficiency of their work. There is a need for improvement of the SPT's institutional capacity, including its staffing, funding, and resources, to better enable it to carry out its mandate effectively and efficiently. The UN should give additional funds to the SPT because the Subcommittee plays a critical role in preventing torture and ill-treatment worldwide. It is essential to ensure that the SPT has the necessary resources to carry out its mandate effectively. Insufficient funding can hinder the SPT's ability to conduct visits, provide technical assistance and capacity-building support to NPMs, and fulfill its reporting obligations. Additionally, given the challenging and complex nature of the Subcommittee's work, adequate funding can help attract and retain highly qualified staff, including experts on detention and human rights. Therefore, investing in the SPT is a worthwhile and necessary investment in promoting human rights and preventing torture and ill-treatment.

The SPT can engage in a constructive dialogue with States Parties to identify the obstacles to access and work collaboratively to address them. This can include identifying alternative sites for visits, such as police stations, border posts, or other places where persons may be deprived of their liberty. The SPT can strengthen its cooperation with civil society organizations, including human rights defenders and non-governmental organizations, to help identify places of detention and advocate for improved access. Finally, the SPT can increase awareness about the importance of access to detention places through public outreach campaigns and engagement with the media. This can help to build political support for improving access and highlight the benefits of independent monitoring of places of detention.

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