



CPT – APT Conference
New partnerships on Torture Prevention in Europe
Background paper
6 November 2009

I. Introduction

Today, torture is recognised by the international community as one of the most brutal attacks on human dignity which has to be forcefully condemned whenever and wherever it arises. The universal prohibition of torture occurred in the immediate aftermath of World War II, during which untold barbarities were committed in pursuit of intolerable ideologies. Numerous international instruments have since been adopted in the fight to put an end to acts of torture, the most prominent being the Convention against Torture¹, at the United Nations level, and the European Convention on Human Rights² and the European Convention for the Prevention of Torture³, at the European level. The prohibition of torture and inhuman or degrading treatment is one of those few human rights which do not permit any derogation. Nevertheless, in too many States the risk of torture and other forms of ill-treatment by State officials remains all too prevalent.

Finding out whether a person is exposed to, or has suffered from, an act of ill-treatment while deprived of his/her liberty is not always easy. Firstly, such acts usually occur in isolated places of detention by officials who believe they will not have to account for their actions. Secondly, people exposed to acts of ill-treatment do not always want to talk about their experiences, let alone confront the responsible people/organisation with their allegations. Thirdly, the physical scars (if any) may not be in evidence by the time any complaint is made. Fourthly, independent structures enabling complaints about ill-treatment to be submitted, which result in an effective investigation, may not exist. Moreover, judicial procedures are often very long and pose many obstacles during which the individual has to re-live his/her experiences of the ill-treatment.

¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Entry into force: 26 June 1987.

² European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome, 4.XI.1950 (see www.echr.coe.int)

³ European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, [CPT/Inf/C \(2002\) 1](#), adopted in Strasbourg, 26.XI.1987.

For these reasons, and others, much emphasis has been given to establishing mechanisms for preventing acts of torture before they occur rather than waiting to deal with their consequences. At the national and international level, the establishment of professional bodies charged with inspecting and monitoring places of detention has proven to be one of the most effective means to prevent torture and other forms of ill-treatment. These proactive approaches complement the reactive judicial processes in place to sanction severely acts of ill-treatment by State officials, and together they should combine to prevent act of torture and the emergence of a culture of impunity developing within law enforcement and other State agencies. In a number of countries, the law enforcement and other State agencies have themselves welcomed the additional scrutiny and accountability imposed on them to back up the declared policies of zero tolerance against ill-treatment.

The architecture within Europe for independent monitoring bodies is now composed of the European Committee for the Prevention of Torture (CPT), the United Nations Subcommittee on the Prevention of Torture (SPT) and national preventive mechanisms (NPMs) of varying forms. In addition, many European States have an active civil society carrying out some sort of monitoring role. Further, internal controls over the acts of State officials exist to one degree or another and, in some instances, specialised independent complaints bodies have also been established.

The sections below focus on the CPT, SPT and NPMs – the focus of the Conference on new partnerships for torture prevention in Europe.

II. The Committee for the Prevention of Torture (CPT)

The inspiration for the CPT was drawn from the work of the International Committee of the Red Cross, which pioneered the notion of protecting detained persons through a system of visits to places of detention by an expert and impartial body. The proposal for a European treaty was made by the Consultative Assembly of the Council of Europe, based on a draft of a European Convention elaborated by the International Commission of Jurists and the Swiss Committee against Torture⁴ (now renamed Association for the Prevention of Torture).

The CPT was established in 1989, following the ratification of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT) by seven Member States of the Council of Europe. Today all 47 Member States are bound by the Convention, and one of the conditions for any new Member State invited to join the Council of Europe is to become a Party to this Convention.

⁴ It was Jean-Jacques Gautier, a retired Swiss banker, who had the idea of a visit-based mechanism to assist States in preventing ill-treatment in places of detention. Through the Swiss Committee Against Torture he campaigned tirelessly for such a mechanism to be established at the United Nations level, and when the process stalled attention turned to the European level.

As the CPT stated in its first General Report, its duty is broader than merely reporting on the allegations of torture or inhuman and degrading treatment; ‘rather, it must look into the general conditions surrounding the alleged abuses and, if need be, suggest ways of both stopping the abuses in the immediate and of preventing their reoccurrence in the future’. In order to carry out its work effectively, the CPT has been granted extensive powers to visit any place within a State’s jurisdiction where a person is deprived of his/her liberty, at any time, and to be granted access to information it requires to carry out its task. Further, it may interview in private persons deprived of their liberty.

As of 25 October 2009, the CPT had carried out 277 visits, 168 of a periodic nature and 109 ad hoc visits (i.e. those visits required by the circumstances). On the basis of 18 to 20 visits per year, the CPT attempts to ensure that a periodic visit is carried out to most States Parties on average every four years. Following a visit, a report is drafted and submitted to the State with recommendations, comments and requests for information, and the State is given either three or six months to respond⁵. The CPT’s visit report remains confidential, unless the State concerned authorises its publication. However, it should be noted that a practice has developed whereby the vast majority of States authorise the publication of the visit report, usually together with the response of the authorities to that report. As of 25 October 2009, 222 CPT visits reports and their responses have been published.

In 1989, “*the making of the Convention and the establishment of the CPT were revolutionary steps for the international community. For the first time a group of States has set up an international body of independent experts (...) granted the unprecedented right to enter the territory of sovereign States and visit all places where persons are deprived of their liberty by a public authority*”⁶.

Twenty years later, the idea that places of deprivation of liberty are opened to outside scrutiny by independent international and national bodies is no longer a revolutionary concept. Instead, it is considered as part of the normal democratic accountability and transparency process in the functioning of a State’s system of detention.

III. The Subcommittee on Prevention of Torture (SPT)

The long-awaited entry into force of the United Nations Optional Protocol to the Convention against Torture (OPCAT)⁷, on 22 June 2006, represents another significant breakthrough in the “normalisation” process of independent monitoring regimes.

⁵ In general, ad hoc visit reports request a response within three months and periodic visit reports a response within six months.

⁶ See First General report on the CPT’s activities covering the period November 1989 to December 1990, CPT/Inf (91) 3, 20 February 1991, CPT(91)3, paragraph 97.

⁷ Adopted by the UN General Assembly in A/RES/57/199 of 18 December 2002.

The OPCAT establishes for the first time a “system of regular visits” undertaken by both international and national preventive bodies. The international aspect is covered by the newly-established United Nations Subcommittee on Prevention of Torture (SPT), which was set up in December 2006 and currently comprises ten independent experts⁸.

The SPT has two broad aspects of its preventive mandate. In first place, the SPT is mandated to monitor regularly all places of detention and is granted with extensive powers. Like the CPT, the SPT can hold interviews in private without witnesses with both persons deprived of their liberty and others. Following its visits, the SPT makes recommendations to the relevant authorities for improvements in the conditions of detention and treatment of detained persons, as well as on the functioning of the places of detention. These recommendations are the basis for establishing and maintaining a cooperative dialogue with the relevant authorities. In addition to its “operational function”, the OPCAT grants the SPT an “orientation” function. The SPT is therefore mandated to not only provide advice on the interpretation of the OPCAT, but also to furnish assistance and advice regarding an NPM’s designation, establishment and functioning.

Since its establishment, the SPT has carried out seven in-country visits to different continents and one in-country engagement with the Estonian NPM. To date, Sweden is the only European country to have been visited by the SPT (March 2008); the report on that visit together with the State’s response was published in September 2008⁹. As is the case with the CPT, a visit report by the SPT may only be published with the authorisation of the State Party concerned.

IV. National Preventive Mechanisms (NPMs)

At the national level, States Parties acquire the obligation upon ratification of the OPCAT to maintain, designate or establish one or several national preventive bodies, also called National Preventive Mechanisms (NPMs). NPMs have a mandate to monitor all places of detention regularly and to propose recommendations and observations to prevent torture and other ill-treatment. They also have a mandate to submit proposals and observations concerning existing or draft legislation.

It should be recalled that OPCAT sets out basic requirements for the establishment of NPMs by a State Party. To begin with, a NPM must be independent of the Government, including functional independence. This means that the NPM must not be under the authority of any government ministry or other institution and should be established by its own organic law or constitutional provision. The personnel employed by the NPM must be independent; they should not work for the government. Further, a NPM’s membership must include professionally competent experts, have a reasonable gender balance and include representatives of ethnic and minority groups. An NPM must also be adequately funded. Lastly, the NPMs should be granted the necessary powers and guarantees to carry out their preventive mandate, namely to have access to all places of detention, relevant information and all persons deprived of their liberty. The States should also give due consideration to the 1990 United Nations Principles relating to the status of national

⁸ This number shall rise to 25 independent experts in October 2010.

⁹ See CAT/OP/SWE/1, 10 September 2008, available at www.ohchr.org. Subsequently, the CPT carried out its 4th visit to Sweden in June 2009. (See www.cpt.coe.int/en/states/swe.htm).

institutions for the promotion and protection of human rights – known as the Paris Principles¹⁰ when establishing the NPM. .

The visits to places of detention conducted by NPMs are by nature more regular and frequent than the visits carried out by international preventive bodies. Although NPMs are not bound by strict confidentiality rules such as those pertaining to the CPT and SPT, they may choose not to publish all of their reports as part of their strategy to maintain a cooperative dialogue with the authorities. At present, NPMs in different countries have adopted varying approaches towards the publication of their reports although States Parties have the obligation under the OPCAT to publish and disseminate the NPM annual reports. The NPMs are clearly the main novelty of the OPCAT, and are likely to develop into key interlocutors for the State Party and for the CPT, in addition to the SPT. NPMs represent the main added-value for the States Parties to both ECPT and OPCAT.

V. The challenge of multiple bodies, at different levels, monitoring places of detention

To date, 26 Member States of the Council of Europe have ratified both OPCAT¹¹ and ECPT. For these countries, places of deprivation of liberty will be visited on a regular basis by the National Preventive Mechanism (NPM)¹², and on a periodic basis by delegations of the CPT and SPT.

In that context, a number of challenges arise from the existence of several bodies in the European region charged with monitoring places of detention with a view to preventing ill-treatment: for example, in terms of cooperation, exchange of information, implementation of recommendations, overlap and duplication of work, and coherence of standards. From the challenges of this unprecedented situation arises a unique opportunity to build new partnerships to strengthen the effectiveness of torture prevention in the European region.

The OPCAT responds partially to some of these challenges and establishes a basis for cooperation between the various levels of monitoring bodies (United Nations, European and national). Firstly, it envisages a strong and direct relationship between the SPT and NPMs.¹³ Secondly, the SPT should “*cooperate, for the prevention of torture in general, with (...) the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment*”¹⁴. Further, OPCAT also encourages the SPT and regional bodies “*to consult and cooperate with a view to avoiding duplication*”¹⁵.

¹⁰ The “Paris Principles” were designed for general purpose human rights organisations such as National Human Rights Commissions but they include measures to safeguard the independence of institutions. See UN General Assembly resolution A/RES/48/134 (Annex) of 20 December 1993.

¹¹ To date, a further 11 European States parties to the European Convention for the Prevention of Torture have signed the OPCAT, namely: Austria, Belgium, Finland, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal and Turkey.

¹² As far as the APT is aware, only 19 States from the 26 States Parties to the OPCAT and the ECPT have designated their NPM. See appendix for further information.

¹³ See OPCAT, Articles 11 (b), 12 (c), 16 (1), 20 (f).

¹⁴ See OPCAT, Article 11(c).

¹⁵ See OPCAT, Article 31.

For its part, the CPT has regularly mentioned its readiness to cooperate with the SPT and has also recognised that “*the national preventive mechanisms operating under the Optional Protocol will be among the CPT’s most important interlocutors.*”¹⁶

One additional response to the number of challenges that arise from the existence of several bodies in the European region charged with monitoring places of detention, is the implementation of a European NPM project¹⁷ specifically aimed at providing intensive on-site training and exchanges of best practice for the staff of NPMs. The project also aims to organise thematic workshops geared towards specific NPM common concerns, and to foster the creation of an active network of European NPMs, thereby creating a forum for peer exchange (the *European NPM Project*). The overall objective of the European NPM Project is to strengthen the prevention of torture at the domestic level in all Council of Europe member States and to help contribute to a greater understanding of uniform standards in preventive work in this area. The context of the European NPM Project will be discussed in Strasbourg on 5th November 2009, at the first meeting of the Heads of the European NPM network.

VI. The Conference on new partnerships

The “New Partnerships for Torture Prevention in Europe” Conference is being organised to mark the occasion of the 20th anniversary of the entry into force of the ECPT. It will gather for the first time representatives from the Council of Europe Member States, the CPT, the SPT, European NPMs, other international bodies and civil society to exchange views on how to address these new challenges and develop new partnerships.

The sections below attempt to provide some guidance on the three main topics which have been identified for discussion during the plenary sessions and in the thematic working groups of the Conference. For each of the three topics, namely, the sharing of information, the coherence of standards and the effective implementation of recommendations, a number of issues and considerations are laid out below. The discussion below is complemented by a list of topics and questions which may be debated during the various sessions of the Conference (see Appendix I).

This section focuses on the three main actors involved in torture prevention at the European level, namely the CPT, the SPT and NPMs, but the potential role of other actors is not to be underestimated, and may be further discussed during the Conference.

¹⁶ See 16th General Report on CPT’s activities covering the period 1 August 2005 to 31 July 2006, CPT/Inf (2006) 35, preface.

¹⁷ The project will cover the years 2010 and 2011, lasting until Spring 2012. It will be funded under a joint European Union – Council of Europe project as well as by the Human Rights Trust Fund. .

1. Promoting the sharing of information between the preventive bodies

One of the challenges facing the CPT, SPT and NPMs in carrying out their monitoring work is related to the sharing of information.

Access to information is absolutely essential if these preventive bodies are to carry out their mandates effectively. This fundamental requirement is reflected in the Conventions establishing the CPT and SPT.

The ECPT, under Article 8, paragraph 2 (b), (c) and (d) and paragraph 4, states that a Party will provide the CPT with the following rights of access:

2. (b) full information on the places where persons deprived of their liberty are being held;
- (c) unlimited access to any place where persons are deprived of their liberty, including the right to move inside such places without restriction;
- (d) other information available to the Party which is necessary for the Committee to carry out its task. In seeking such information, the Committee shall have regard to applicable rules of national law and professional ethics.
4. The Committee may communicate freely with any person whom it believes can supply relevant information.

The OPCAT, under Article 12, paragraph (b), and Article 14, paragraphs (a) and (b), provides for State Parties to grant the SPT the following access:

12. (b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
14. (a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
- (b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention.

The OPCAT, under Article 20, paragraphs (a) and (b), also provides for States Parties to grant national preventive mechanisms with:

20. (a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
- (b) Access to all information referring to the treatment of those persons as well as their conditions of detention.

Therefore, each of the preventive bodies is entitled to receive all relevant information from the States Parties¹⁸.

In the course of visits to States Parties, the monitoring bodies (CPT, SPT and NPMs) often come across or are provided with information of a sensitive nature concerning individual persons deprived of their liberty. The ECPT and the OPCAT therefore provide for the protection of such sensitive data as both instruments state that the information gathered by the preventive bodies should remain confidential and no personal data should be published without the consent of the person concerned.¹⁹

The information gathered by the preventive bodies, whether through visits or via correspondence, forms the raw data from which visit reports are drafted, and various recommendations formulated. It also feeds into annual reports.

Is the sharing of information between the SPT, CPT and NPMs essential to guarantee an effective system of prevention of torture in the Council of Europe region and to avoid possible gaps and duplication?

Considered in the context of the confidentiality issue, this represents a challenge for the SPT and CPT. Article 11 of the ECPT states: “*the information gathered by the Committee²⁰ in relation to a visit, its report and its consultations with the Party concerned shall be confidential*” (art. 11). Article 2(3) of the OPCAT provides that the “*the Subcommittee on Prevention shall be guided by the principle of confidentiality (...)*”. The principle of confidentiality has been strictly observed both by the CPT and the SPT in their work, and this creates difficulties in terms of the information sharing possibilities between the two bodies. But are they insurmountable?

Sharing of information should also include consultation and coordination regarding strategies and planning, in particular the programme of visits. It is worth mentioning that the SPT and the CPT are already exploring means to share information and harmonise practices. The fact that some SPT members are also CPT members may facilitate the sharing of information between the two preventive bodies.²¹ Frequent contacts were also established between the CPT’s Bureau and the SPT’s Chairperson on questions of mutual interest. Further, the Secretary of the SPT held detailed practical discussions over two days with members of the CPT’s Secretariat in Strasbourg²² in July 2008.

¹⁸ Establishment and Designation of National Preventive Mechanisms, APT, 2006, p 58.

¹⁹ See OPCAT Article 11 (1), (3), ECPT and Articles 16 (2) and 21 (2).

²⁰ This “may consist of facts it has itself observed, information which it has obtained from external sources and information which it has itself collected”. Explanatory report of the ECPT.

²¹ Current SPT members Marija Definis Gojanovic and Emilio Ginés are also CPT members, while Zdenek Hajek is a former CPT member. Former SPT Chairperson Silvia Casale was previously President of the CPT and remained a member of CPT during her SPT mandate. Leopoldo Torres Boursault was also a former CPT member .

²² See CPT/Inf (2008) 25, 18th General Report on the CPT’s activities covering the period 1 August 2007 to 31 July 2008, Para 22.

Ways of establishing a structured and regular dialogue between the CPT and the SPT on common topical issues related to the prevention of torture (diplomatic assurances, unlimited detention, access to military bases in an extraterritorial context) could also be explored.²³

The main challenge, however, arises in relation to the sharing of substantial information, in particular visit reports. As we have seen, there is an exception to the principle of confidentiality both in the ECPT²⁴ and the OPCAT²⁵ - i.e. where a State Party authorises the publication of the visit report. This has become standard practice, with one or two exceptions, at the European level²⁶ and two out of seven SPT reports have been published so far.²⁷ It is likely that European States visited by the SPT will adopt a similar practice of authorising publication of visit reports. However, publication may not be immediate, as States Parties are consulted on the content of the report. Ways should therefore be explored by the CPT and the SPT to forward to each other their confidential reports.

The CPT proposed as early as 1993 that States bound by both treaties agree that visit reports drawn up by the CPT in respect of their countries, and their responses to such reports, be immediately and systematically forwarded to the SPT on a confidential basis. The CPT is of the view that implementation of this measure should not require an amendment to the ECPT, as both bodies are bound by the same rule of confidentiality.²⁸ The SPT met the CPT to discuss this issue,²⁹ though to date this procedure has not been implemented.

The transmission of SPT reports to the CPT seems for the moment of a more theoretical nature, considering that few European countries may be visited. However the same procedure of systematic transmission of reports on a confidential basis might be considered.

Further, the SPT and CPT should establish mechanisms to exchange information on the programme of visits. Of course, given that the SPT is likely to carry out only a very few visits in the European region in any given year, the onus should perhaps be more on it to ensure it does not carry out a general visit to a country in the same period as the CPT. The CPT could also provide the SPT with a list of the periodic countries it has decided to visit for the following year a little earlier than the date on which they are published, which is usually early December. As for the ad hoc visits carried out by the CPT, they are usually in reaction to a particular circumstance or part of a targeted follow-up to a previous visit and there would appear to be less necessity for them to be communicated to the SPT in advance.

²³ See “Issues raised by the CPT’s representatives at the meeting with the UN Subcommittee on Prevention established under the OPCAT”, CPT(2007)23.

²⁴ See ECPT Article 11 (2)

²⁵ See OPCAT Article 16 (4)

²⁶ As of 25 October 2009, 222 CPT reports have been published.

²⁷ See SPT Report to Sweden, CAT/OP/SWE/1, 10 September 2008 and SPT report to the Maldives, CAT/OP/MDV/1, 26 February 2009, available at: www.ohchr.org

²⁸ See Appendix of CPT 3rd annual report on activities, CPT/Inf(93)12; 13th General Report, CPT/Inf(200)35, paragraph 22; and 16th General Report, CPT/Inf (2006) 35, Preface..

²⁹ See CAT/C/40/2, 25 April 2008, Para 37, and CAT/C/42/2, 7 April 2009 available at www.ohchr.org

The sharing of information between the two international bodies and the NPM represents a different kind of challenge. NPMs, which are not bound by the principle of confidentiality under the OPCAT (with the exception of the publication of personal data) can provide invaluable information to the SPT and the CPT. This may include general information about places of detention, persons deprived of their liberty, systemic analysis of the detention regime and any information related to torture prevention, including NPM visit reports.

The challenge lies in reciprocity: if NPMs constitute a source of information for the international bodies, it is only reasonable that they will expect information in return. This issue of confidentiality mentioned above then comes into play.

Transmission of confidential SPT reports to NPMs is an issue that remains to be settled. Article 16 (1) of the OPCAT provides that the SPT “*shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the NPM*”. Reading this article in conjunction with Article 11 (1)(b)(iii) of the OPCAT, which states that the SPT shall “*maintain direct, if necessary confidential, contact with the national preventive mechanisms*”, one can infer that the SPT can send its in-country visit report to the NPM of the concerned country, or at least the specific part of the report related to the NPM. To be implemented, such a procedure would require an evolution of current SPT practice. However, the transmission of SPT reports to the concerned NPMs would contribute to the implementation and follow-up of SPT recommendations, as well as NPM functioning.

As regards the CPT, it is true to say that, to date, CPT delegations visiting States Parties will meet with national preventive mechanisms and that, although there will be an exchange of views on particular topics, the flow of information will tend to be in one direction – towards the CPT. Thereafter, until a CPT report is made public the NPM will not receive any official feedback on a visit or the contents of the visit report. Of course, with the entry into force of OPCAT and the establishment of designated NPMS, the transmission of confidential CPT reports to the NPM of the concerned State has not been explored. It does however at first glance seem rather difficult to implement as the ECPT does not contain any provision regarding the transmission of information to national bodies. Furthermore, the non-confidential nature of the NPM work represents a challenge that the CPT might need to address in the near future. It can be noted that in some countries, the State Party itself has transmitted the CPT report to the NPM on a confidential basis. In other countries, the CPT report is made public by the State authorities immediately upon being received without waiting until a response to the report has been drawn up.

2. Facilitating the coherence of standards

Considering the multiplicity of actors, the issue of the standards to be applied and eventually developed is crucial. Facilitating their coherence is essential for the credibility and effectiveness of the preventive bodies and especially for the authorities that have to implement the recommendations.

In the CPT's mandate, there is no reference to a legal framework for the CPT's work, although the Preamble of the ECPT mentions the European Convention on Human Rights and its article 3 prohibiting torture and other forms of ill-treatment. In contrast, the OPCAT provides that the SPT shall be guided by "*the norms of the United Nations concerning the treatment of people deprived of their liberty*" (art. 2.2). It also states that NPMs should make recommendations to the authorities "*taking into account the relevant norms of the United Nations*" (art. 19(b)).

In its visit reports, the CPT has had to develop its own standards to analyse the situation from a preventive point of view. Furthermore, since its second General Report of Activities in 1991, the CPT has started to develop general substantive standards related to deprivation of liberty. Over the years, the CPT has produced a comprehensive set of standards³⁰ covering:

- police custody
- imprisonment
- health care services in prisons
- foreign nationals detained under aliens legislation
- involuntary placement in psychiatric establishments
- juveniles deprived of their liberty
- women deprived of their liberty
- training of law enforcement personnel
- combating impunity
- means of restraints in psychiatric establishments for adults
- deportation by air and forced return of foreign nationals

and, in the recently published 19th General Report:

- safeguards for irregular migrants deprived of their liberty.

Some CPT standards have been used and referred to (directly or indirectly) by other bodies, such as the European Court on Human Rights³¹ and the UN Committee against Torture.³² The revised European Prison Rules³³ draw heavily on the CPT standards – as the preamble specifically acknowledges:

".... Having regard also to the work carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and in particular the standards it has developed in its general reports...."

In Europe, these standards have really become a reference and will most probably also be used and applied by European NPMs in their reports and recommendations. The risk of different or contradictory standards between NPMs and the CPT would appear to be more theoretical than real.

³⁰ See: <http://www.cpt.coe.int/en/documents/eng-standards.pdf>

³¹ See, for example, *Nevmerzhiisky v. Ukraine*, application 54825/00, judgment of 5 April 2005.

³² See, for example, *Saadia Ali v Tunisia*, Communication 291/2006

³³ Appendix to Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules, available at: <https://wcd.coe.int/ViewDoc.jsp?id=955747>.

As we know, the SPT's mandate extends far beyond Europe, and ensuring coherence in the application of standards to countries in different continents will present a greater challenge. In view of this, a differentiation between the various types of standards might be considered. For example, should standards regarding material conditions be different? Are CPT standards applicable to countries outside of the European region? Are there not a set of basic material conditions that all persons deprived of their liberty, no matter what country that may be, should enjoy? Even within the European region there are vast differences in the material conditions in which persons deprived of their liberty are held. In every country the CPT visits, it is mindful of the general (historical, social, economic) context as it explained in its 1st General Report and no doubt the SPT will also have to take such matters into consideration.

Other types of standards such as legal or procedural safeguards might be more universally applicable. In this regard, it is interesting to look at the example of the three fundamental safeguards during police custody (notification of a third party, access to a lawyer and access to a doctor) developed by the CPT in its 2nd annual report. These safeguards have also been adopted or promoted in/by the:

- UN Committee Against Torture³⁴
- UN Human Rights Committee³⁵
- African Commission on Human and People's Rights³⁶
- Inter-American Commission on Human Rights,³⁷ and
- SPT.³⁸

Nevertheless, it is clear that there will need to be a degree of coherence between the recommendations being put forward by the SPT and CPT in respect of the European countries that both bodies visit or comment upon.

The issue of the standards applicable to assess NPMs should be examined separately. The SPT has the mandate “*to make recommendations and observations to the States Parties with a view to strengthening the capacity and mandate*” of NPMs³⁹. Hence, an important part of each SPT visit report is devoted to an analysis of the NPM. It is expected that the SPT will develop some standards to assess NPM's compliance with OPCAT requirements and NPM effective functioning.⁴⁰

³⁴ See CAT General Comment 2 of 24 January 2008, paragraph 13

³⁵ See HRC General Comment 20 of 10 March 1992, paragraph 11

³⁶ Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa “Robben Island Guidelines”, Article 20.

³⁷ In the Commission's *Principles and best Practices on the Protection of Persons Deprived of Liberty in the Americas*, available at:

<http://www.cidh.org/Basicos/English/Basic21.a.Principles%20and%20Best%20Practices%20PDL.htm>. See in particular principles V and IX(3).

³⁸ See SPT Visit Report on the Maldives, available at:

<http://www2.ohchr.org/english/bodies/cat/opcat/docs/visit/FinalMaldivesReport.doc>

³⁹ See OPCAT Article 11 (b)(iv),.

⁴⁰ In its first annual report, the SPT developed “Preliminary Guidelines for the ongoing development of national preventive mechanisms”, CAT/C/42/2, para.28.

The CPT is not mandated to make recommendations on NPMs but it has consistently recommended the establishment of independent monitoring bodies to regularly visit not only prisons,⁴¹ but also juvenile detention centres,⁴² psychiatric institutions⁴³ etc. Since the entry into force of the OPCAT, the CPT has included the OPCAT dimension in some of its recommendations to the States Parties, such as in Albania⁴⁴ (impact of the NPM work for persons deprived of their liberty), Czech Republic⁴⁵ (impact of the recommendations of the NPM), France⁴⁶ (scope of places of detention to be visited by the eventual NPM), and Switzerland⁴⁷ (process of selection of NPM members). The question of risk of contradictory recommendations regarding NPMs should be discussed.

In this context, it should be noted that the European NPM Project's "First Meeting of the European NPM Network", to be held on 5 November 2009, aims to mobilise experts (including former CPT members and Secretariat staff), SPT members and their Secretariat, the APT and NPMs to work together, within a forum of peer exchange, to contribute to a greater understanding of uniform standards in preventive work regarding ill-treatment within places of deprivation of liberty. The Project is composed of a series of modules for the gradual capacity building of individual NPMs. The majority of these will focus on the methodologies for monitoring different types of places of detention. The modules target teams of practitioners and involve the teams carrying out monitoring visits within the context of on-site exchanges of best practices. In addition, the Project will develop specific monitoring tools for each category of place of detention. It will also promote awareness-raising activities and peer exchange.

3. Ensuring and monitoring the effective implementation of the recommendations of the preventive bodies

After each visit, the SPT, CPT and national preventive mechanisms are required to draw up a report based upon the facts found during the visit and transmit it, along with any recommendations and observations they consider necessary, to the authorities of the States Parties.⁴⁸ The recommendations contained within the reports are designed to be preventive in nature and put forward measures to be taken by States Parties to strengthen the protection of persons deprived of their liberty from the risks of torture and other forms of ill-treatment.

⁴¹ See CPT second general annual report, CPT/Inf (92) 3 13 April 1992, paragraph 54.

⁴² See 9th General Report on the CPT's activities, covering the period 1 January to 31 December 1998, CPT/Inf (99) 12, Para 36, 30 August 1999, paragraph 36.

⁴³ See 8th General Report on the CPT's activities covering the period 1 January to 31 December 1997, CPT/Inf (98) 12, 31 August 1998, paragraph 55,

⁴⁴ See CPT/Inf (2009) 6, 21 January 2009, paragraph 17.

⁴⁵ See CPT/Inf (2007) 32, 12 July 2007, paragraph 24.

⁴⁶ See CPT/Inf (2007) 44, 10 December 2007, paragraph 136.

⁴⁷ See CPT/Inf (2008) 33, 13 November 2008, paragraph 54.

⁴⁸ See OPCAT Article 16 as concerns the SPT and Article 19 (b) as concerns NPMs; and ECPT, Article 10, paragraph 1.

The recommendations of the monitoring bodies lie at the heart of the preventive approach. In its second annual report, the SPT said of the importance of their recommendations in the case of safeguards: “*it is the role of preventive mechanisms (...) to make recommendations to improve the system of safeguards, both in law and in practice, and thereby the situation of people deprived of their liberty*”.⁴⁹

The recommendations of the preventive bodies are, by definition, not legally binding. It is the responsibility of the State to take the necessary steps to implement those recommendations.

Under the ECPT, one of the defining principles governing the application of the Convention is cooperation between “*the Committee and the competent national authorities of the State concerned*” (Article 3). The CPT has reiterated in numerous visit reports that the principle of cooperation does not just extend to the facilitation of visits to a country but more fundamentally to the action taken to improve the situation in the light of the recommendations put forward by the CPT.

In terms of implementing recommendations, the OPCAT goes beyond Article 10, paragraph 1 of the ECPT by placing more stringent obligations on States Parties in relation to prevention; that is, they are under a duty to examine the recommendations of the SPT and the NPMs and to enter into dialogue with them on possible implementation measures.⁵⁰

In case of a failure to cooperate or a refusal to improve the situation in the light of the CPT’s recommendations, the CPT may decide to make a public statement.⁵¹ It is however not a measure to which the CPT has had to in past or would like to in the future resort to frequently, as it is evidence of a breakdown in cooperation with the State Party. A similar provision for issuing a public statement is to be found in the OPCAT⁵² and it is to be seen how the SPT will approach this subject.

Over its 20 years of work, the CPT has produced numerous recommendations to States and many have been implemented. However, the CPT has also faced “*situations where key recommendations repeated after multiple visits remain unimplemented. Yet another visit or the issuing of a public statement are not necessarily the best tools with which to make progress*”⁵³. The CPT tends to adopt a more proactive strategy vis-à-vis implementation of its recommendations, through more intense dialogue and high level talks between the Committee and the Government concerned.

Reasons for not implementing recommendations may vary and it would be important to analyse these reasons in order to adopt the best strategy to address them.

One reason is however linked to the difficult economic situations when it comes to the implementation of recommendations with important financial implications (infrastructure, etc.).

⁴⁹ See CAT/C/42/2, 7 April 2009, paragraph 13

⁵⁰ See OPCAT Articles 12 (d) and 22.

⁵¹ See ECPT Article 10 (2).

⁵² See OPCAT Article 16 (4).

⁵³ See CPT’s 15th General Report, CPT/Inf(2005)17, paragraph 23.

The CPT is conscious that certain recommendations may require capital injections and a pilot project was commissioned to conduct a study in three chosen countries in order to assess their needs as regards the implementation of the Committee's recommendations, to identify concrete areas and proposals for outside assistance and to seek external financing.⁵⁴ Further, with the widening of the mandate of the Council of Europe Development Bank in June 2006 to include financing *infrastructure of administrative and judicial public services*, several proposals have been submitted by States for assistance in financing the construction of prisons and police stations.

The OPCAT, as opposed to the ECPT, provides for the establishment of a specific mechanism to facilitate the implementation of the SPT recommendations, namely the OPCAT Special Fund. This Fund intends "*to help finance the implementation of the recommendations made by the SPT after a visit to a State Party, as well as education programmes of the NPM*".⁵⁵ Possibilities of synergies between the Special Fund and the implementation of CPT recommendations could be explored.⁵⁶ European States and other relevant bodies may also be interested in contributing financially to this Special Fund in order to facilitate the implementation of the SPT recommendations in the Council of Europe region.

However, over and above the very real problem of implementing recommendations which may have a considerable financial implication, it should be noted that many recommendations do not require enormous expenditure. More often than not recommendations aimed at preventing ill-treatment require changing the prevailing attitudes of law enforcement officials (and other State officials) towards the issue of the use of force against persons deprived of their liberty, which comprises a mixture of measures related to recruitment, training, education, clear administrative and legal rules, effective internal controls and a determination by the authorities to hold officials to account for their actions. As the CPT has witnessed, building a new prison without addressing issues such as management, staffing and regime will not resolve the fundamental issues linked to preventing ill-treatment. More likely than not, the new infrastructure will degrade far quicker than it ought to.

An essential aspect of ensuring the implementation of the recommendations produced by the preventive bodies is developing partnerships. The SPT could potentially contribute to the effective implementation of the CPT recommendations, using them as a basis for their own recommendations. For instance, the SPT visited Sweden in 2008 and reportedly took into consideration the CPT recommendations in their in-country visit report, more particularly regarding the practice of imposing restrictions. The SPT shared the CPT views on that issue and stated: "*As the Swedish Government is currently studying the need for legislative change and not all recommendations of the CPT are reflected in the legislation in force, some of the recommendations of the SPT below are similar to those made by that regional treaty body.*"⁵⁷

⁵⁴ Pilot project on the implementation of CPT's recommendations: call for tenders. CPT(2006)16. The three countries selected for the project were: Albania, Georgia and Moldova.

⁵⁵ See OPCAT Article 26.

⁵⁶ Added value of the Optional Protocol for States Parties to the European Convention for the Prevention of Torture, APT position paper, March 2003, p.4, available at www.apr.ch.

⁵⁷ CAT/OP/SWE/1, 10 September 2008, paragraph 121. Available at www.ohchr.org.

However, the main partners in this regard are the NPMs. They are ideally placed to monitor and follow-up on the implementation at the national level of recommendations issued by the international bodies. The NPMs have not only frequent and regular access to all places of detention at the national level, they also have the mandate “*to submit proposals and observations concerning existing or draft legislation*” (art. 19(c) OPCAT). In addition, NPMS and the relevant authorities maintain a constructive and permanent dialogue. As mentioned in section 2, ways should be explored by the SPT and the CPT to communicate their recommendations to the NPM, on a confidential basis if necessary.

Finally, the OPCAT empowers the SPT to offer NPMs “*training and other technical assistance with a view to strengthening their capacities.*”⁵⁸ This possibility could also be used to strengthen the capacity of NPM to follow-up on the implementation of recommendations issued by the different preventive bodies.

⁵⁸ See OPCAT Article 11 (b)(ii).

Appendix I

List of discussion questions and topics (non-exhaustive)

Panel 1: Promoting the sharing of information between the preventive bodies

- To what degree is confidentiality a foundation block of the Conventions establishing the CPT and SPT, and hence of their relationships with NPMs?
 - What are the obstacles to sharing written visit reports between the CPT and SPT? (CPT → SPT and SPT → CPT)
 - Should State Parties be encouraged to transmit the visit reports drawn up by the CPT and SPT to the NPM? Is a NPM bound by confidentiality if it receives a report or is that an issue for the national authorities to determine?
- Should the CPT and SPT consult prior to adopting their respective visit programmes for the following year? Does it matter if a European country is visited by both the CPT and SPT in the same year? Is there a means of predicting (approximately) which countries in Europe will be visited in the future by the CPT and SPT in any given year?
- Should there be an annual exchange of views between the CPT and SPT – perhaps a hearing of the CPT President before the SPT and of the SPT Chairperson before the CPT on a rotational basis? What would be the purpose of such a hearing? Should it be on a thematic basis?
- How can the sharing of information between the international bodies and the NPMs be improved?
 - Should NPMs be briefed orally/in writing about the findings of SPT and CPT delegations following a visit, and at what stage: preliminary observations; written report; oral exchange?
 - Can sensitive case information on individuals be shared between the CPT and SPT, between the CPT and NPMs and between the SPT and NPMs? Does it require the express consent of the individual concerned (written/oral)?
 - Should individual letters addressed to the CPT and SPT raising issues of concern in relation to a practice or particular treatment an individual has alleged to have suffered be transmitted to the relevant NPM?
- Can NPMs forward their annual reports to the CPT at the same time they send them to the SPT? Can NPM reports on visits to places of detention be sent directly to the SPT or CPT if the NPM considers it appropriate?

- The publication of CPT and SPT visit reports and Government responses in the national language of the country concerned can maximise their impact. Can more be done to promote publication? What role can the NPMs play in this process? (*this point might also be considered under panels 2 & 3*)

Panel 2: *Facilitating the coherence of standards*

- Might the CPT and SPT find themselves advocating different standards? The CPT is not bound by any one Convention although it should have special regard to Article 3 of the ECHR. The SPT carries out its work with reference to the norms of the United Nations. Conflict of approaches may occur particularly as regards new developments in law enforcement such as the introduction of electro-shock weapons (i.e. Tasers).
- When assessing the situation in their respective countries, to what extent are the NPMs guided by the standards set in national legislation and regulations? For example, in some countries, the surface area per prisoner set in law is 2.5 or 3 m², whereas the CPT applies the standard of at least 4 m² per prisoner in multi-occupancy cells. Further, the CPT has recommended that cells measuring less than 6 m² be taken out of service as prisoner accommodation.
- An essential part of the mandate of the SPT is to ensure that NPMs function in an independent and efficient manner. In some of its visit reports, the CPT has also made recommendations on the effectiveness of national inspection and complaints mechanisms. In the future, the CPT might consider it necessary to comment on NPMs. Is there perhaps a risk of contradictory recommendations concerning NPMs or is all (valid) constructive criticism to be welcomed?
- Coherence of standards is not only about being able to communicate reports or referring to basic texts (European or UN or even from other international bodies such as the Inter-American Commission on Human Rights), but also about the knowledge-sharing of existing standards. For example, each NPM setting up similar databases in which would be included not only NPM visit reports but those of the SPT and CPT, as well as the substantive standards each body has adopted, in the national language of the country.
- Is there a contextual assessment as to whether a situation might be considered inhuman or degrading⁵⁹: for example, the treatment afforded to prisoners sentenced to life imprisonment in different jurisdictions or the holding of irregular migrants in poor conditions in police stations for extended periods of time. Might a NPM take a different position from the CPT (or SPT)?

⁵⁹ Where the European Court of Human Rights has delivered a judgment under Article 3 of ECHR on a particular issue/set of circumstances, preventive bodies in Europe should follow its assessment.

Panel 3: *Ensuring the effective implementation of the recommendations of the preventive bodies*

- The effective implementation of recommendations implies that different preventive bodies “speak the same language”, i.e. make recommendations which are consistent. Otherwise States will receive “conflicting messages”. What can be done to avoid such a situation and to ensure that preventive bodies work in harmony?
- How to ensure that recommendations which require legislative changes are implemented? For example, amendments to the legislation concerning the right of access to a lawyer from the very outset of deprivation of liberty by the police, or the right to be medically examined during police custody?
- In certain countries there may be a lack of clear vision or strategic approach on the purpose and organisation of imprisonment or psychiatric care. Addressing findings from a visit to improve a particular establishment will not address the systemic problems. Are NPMs in a position to push for systemic change? Is the CPT or SPT? Should there be a coordinated response when such a situation arises, involving other actors such as the Council of Europe Human Rights Commissioner?
- In some countries, failure to implement recommendations is explained by the “lack of readiness of public opinion to accept change”. For example, this is given as the reason for holding prisoners serving life sentences separately from other prisoners, under much more restrictive regimes or having a tough detention policy towards irregular migrants. Is this a valid response even if accurate? What should the reaction of the preventive bodies be in such circumstances?
- How to ensure the translation into practice of recommendations which require considerable financial resources (especially at times of economic hardship)? External financing is provided by a number of organisations, but sometimes there is a duplication of effort. What can be done to channel the available resources towards issues addressed by the recommendations of preventive bodies? For example, to use the OPCAT Special Fund? Provide assistance in preparation of proposals to the Council of Europe Development Bank, bilateral donors, the European Commission, etc.?
- When Government responses to CPT (and SPT) reports indicate that certain recommendations have been implemented (e.g. closing down of substandard cells), it is not always easy for the CPT or SPT to verify this information. Is there a role to be played by NPMs in systematically checking the implementation of recommendations and giving feedback to the CPT/SPT?
- The most difficult recommendations to implement are ones requiring a change of attitude. In such situations it is more an educational approach to change “cultural” perceptions that is required. Should implementation of such recommendations be pushed to a wider audience and involve addressing the recommendation through support on various levels – legislative change; training courses; educational programmes (school and beyond), intense monitoring and sanctions for digression?

Appendix II



Status of ratifications, signatures
and NPM designations
in the Council of Europe region
Optional Protocol to the
UN Convention against Torture
as of October 2009

50 STATES PARTIES AND 28 NPM DESIGNATED WORLDWIDE; 26 AND 19 IN EUROPE

Country	Date of ratification	NPM designated	Useful information
	26 States Parties	19 NPMs	
Albania	01 October 2003	People's Advocate	Parliamentary Ombudsman
Armenia	14 September 2006	Human Rights Defender's Office	Ombudsperson
Azerbaijan	28 January 2009	Commissioner for Human Rights	Ombudsperson
Bosnia and Herzegovina	24 October 2008		
Croatia	25 April 2005		
Cyprus	29 April 2009	Commissioner of Administration / Ombudsman	
Czech Republic	10 July 2006	Public Defender of Rights	Ombudsperson, NPM unit
Denmark	25 June 2004	Parliamentary Commissioner for Civil and Military Administration	Support from RCT and Danish Institute for Human Rights
Estonia	18 December 2006	Chancellor of Justice	
Former Yugoslav Republic of Macedonia	13 February 2009	Ombudsman possibly with NGOs	Declaration Article 17

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Country	Date of ratification	NPM designated	Useful information
France	11 November 2008	General Inspector of Places of Deprivation of Liberty	New body established and functioning
Georgia	09 August 2005	Public Defender	
Germany	04 December 2008	Federal Agency for the Prevention of Torture and National Commission of the Länder	Article 24 (NPM). 2 new bodies. Federal NPM functioning since May 09 and regional NPM to be established
Liechtenstein	03 November 2006	Corrections Commission	New body
Malta	24 September 2003	Board of Visitors for Detained Persons and Board of Visitors of the Prisons	One new body, one existing. No coordination
Moldova	24 July 2006	National Centre for Human Rights and Consultative Council	Consultative Council is a new body
Montenegro	06 March 2009		Article 24 (NPM)
Poland	14 September 2005	Commissioner for Civil Rights Protection	Ombudsperson, NPM unit
Romania	02 July 2009		Article 24 (NPM)
Serbia	26 September 2006		
Slovenia	23 January 2007	Human Rights Ombudsperson with 3 NGOs	Declaration Article 17
Spain	04 April 2006		
Sweden	14 September 2005	Parliamentary Ombudsman and Chancellor of Justice	Non functioning NPM
Switzerland	24 September 2009	Commission for the Prevention of Torture	New body, selection of the members ongoing
Ukraine	19 September 2006		

Appendix II

Country	Date of ratification	NPM designated	Useful information
United Kingdom	10 December 2003	18 bodies were designated as part of the UK NPM, coordinated by Her Majesty's Inspectorate of Prisons	

23 STATES SIGNATORIES WORLDWIDE; 11 IN EUROPE

Country	Date of signature
	11 States Signatories
Austria	25 September 2003
Belgium	24 October 2005
Finland	23 September 2003
Iceland	24 September 2003
Ireland	02 October 2007
Italy	20 August 2003
Luxembourg	13 January 2005
Netherlands	03 June 2005
Norway	24 September 2003
Portugal	15 February 2006
Turkey	14 September 2005