



August 2006/N° 8

The Optional Protocol to the Convention Against Torture

The prevention of torture especially of people in detention is the aim of the "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (CAT)¹. To reach this aim, the reporting mechanism of the CAT has been amended by an Optional Protocol which will establish new preventive mechanisms. This Optional Protocol to the Convention against Torture (OPCAT)² entered into force on 22 June 2006 when the critical number of 20 ratifications was reached. By now, 22 states have ratified the OPCAT.

What is the Convention against Torture?

The CAT was adopted in 1984. It is a binding international treaty for the states that have ratified it. Compliance with the Convention is monitored by the Committee against Torture. This Committee consists of independent experts whose role is to monitor the implementation of CAT by the States Parties. The States have to present their reports about implementation every 4 years before the committee at its bi-annual meeting in Geneva. The Committee reacts with "Concluding Observations", statements that include recommendations on further action to be taken by the State Party concerned. The Committee also may react to individual complaints it receives. If those complaints hint to serious or systematic violations of the Convention by a State Party, the Committee can initiate inquiries on the matter concerned.³

As of now, the CAT has 74 members and 141 signatories.⁴ Of the members of the new Human Rights Council (HRC) India, Pakistan and Malaysia have not yet ratified the CAT.

What is the Optional Protocol?

The OPCAT is an addition to the Convention against Torture. It was drafted to strengthen the "protection of people deprived of their liberty" on the background "that further measures are necessary to achieve the purposes of the Convention against Torture"⁵ Like the CAT itself, it is only binding for States that accede to it.

The OPCAT establishes an international monitoring body, the *International Subcommittee on Prevention (ISP)*, which will be allowed to undertake country visits inspecting places of detention. It also obliges the States Party to set up at the domestic level one or several *National Preventive Mechanisms (NPM)*. These mechanisms are intended as visiting bodies for the inspection of "any place under its [the State Party's] jurisdiction and control where persons are or may be deprived of their liberty."⁶ The background thought of the whole exercise is that national and international monitoring – in form of visits of places of detention – are the most effective instruments for the prevention of torture and other forms of cruel, inhuman or degrading treatment or punishment.

¹ <http://www.ohchr.org/english/law/cat.htm>.

² <http://www.ohchr.org/english/law/cat-one.htm>.

³ This initiative can only be taken if the State party has not opted out of this obligation under Art. 28 of the Convention.

⁴ <http://www.ohchr.org/english/countries/ratification/9.htm>. The term "member" denotes countries that have ratified the Convention, "signatories" have only signed them, but not ratified, yet.

⁵ Preamble of the OPCAT.

⁶ OPCAT, article 4.

Who has acceded to OPCAT so far?

The current state of membership is 51 signatories, 22 members.⁷ Of the 47 members of the HRC, only 8 have ratified the OPCAT, another 11 signed it, but the majority has not taken action on it as of now. Leading up to the election to the HRC, Germany pledged ratification within 2006.

What is the international Subcommittee?

The ISP is an international monitoring body mandated to undertake regular as well as unannounced visits to places of detention. It will consist of 10 members,⁸ acting in personal capacity, who are elected by the States party to the Protocol. The first election to this body will take place on 18 December 2006. According to the OPCAT, this Subcommittee shall visit places of detention, make recommendations to States Parties concerning the protection of persons detained, as well as concerning the establishment of NPMs. In the future it shall cooperate with the NPMs and advise and assist them in the evaluation of their needs and recommend to States how to strengthen those mechanisms.

The ISP shall also establish a programme of regular visits to the States Parties and undertake follow-up visits where deemed necessary. In its activities, the ISP shall integrate with existing mechanisms (like the Committee against Torture and the Special Rapporteur on Torture) and avoid duplication. As the Committee against Torture only reviews the reports of a State Party every four years and cannot undertake unannounced visits, the work of the ISP will be complementary due to its greater flexibility. The Special Rapporteur (SR) and the ISP will have to adjust their working plans to each others agenda. Yet, given the limited capacity of time available for the work of the SR, and considering that the current SR strongly supports the OPCAT, there too will be collaboration rather than competition.

What is a National Preventive Mechanism?

A NPM is a monitoring body that visits places of detention and makes recommendations to states. It can conduct scheduled and unannounced visits on a reactive and preventive basis. A State party to the OPCAT commits itself to establish one or several NPMs within one year after ratification and to grant the NPM unrestricted access to all places

of detention as well as to information relating to the number of persons in detention and the treatment they receive. The NPMs are the second part of a dual structure, integrating their work with and complementing the efforts of the ISP. The type and shape of the national mechanisms is left up to the State Party, which can adjust it to national particularities, political and geographic structure. Nevertheless, general criteria are given, such as the functional and financial independence and a guaranteed minimum power to undertake regular visits, make recommendations to the relevant authorities, and submit proposals concerning relevant legislation. Also, the NPMs are allowed to freely choose the places they want to visit and conduct private interviews without interference by the authorities.⁹ The importance of those mechanisms lies in their independent nature and the ability to focus on one particular country (compared to the ISP). The NPMs constitute the first safeguard against torture in the system established under the OPCAT as "credible human rights protection has to begin at home"¹⁰

How can NGOs get involved?

National and international NGOs can get involved in shaping effective NPMs. So far, a number of international NGOs were involved in drafting and promoting the OPCAT and in giving advice to the UN Office of the High Commissioner for Human Rights on the establishment of the ISP and to States on possible ways of setting up a NPM.¹¹ Civil society will now be able to bring up concerns and suggestions on how such a national mechanism should work. International NGOs could engage giving advice to governments that are about to set up such a mechanism and provide assistance and training to the new bodies. National needs have to be assessed and advocated. Once a NPM exists, local NGOs will need to draw its attention to existing violations or emerging problems that might require action by the NPM or the ISP, just like they have done before in respect to the CAT. The advantage will be that they now can address a permanent national body instead of a Committee that holds only two sessions in Geneva each year.

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⁷ http://www.ohchr.org/english/countries/ratification/9_b.htm.

⁸ After the 50th ratification of OPCAT, this number will be elevated to 25.

⁹ Article 18 and 19 OPCAT.

¹⁰ Press release on OPCAT of the German Ministry of Justice, 25 April 2006. www.bmj.bund.de.

¹¹ Most prominently APT: www.appt.ch.