



On a visit or a mission? **The Mandate of the Subcommittee on Prevention of Torture.**

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The mandate of SPT: historical context

- Negotiating UNCAT and the proposal of CAT conducting visits to states parties: unsuccessful, albeit Article 20 retained.
- Negotiating OPCAT:
 - Proposal of Costa Rica: programme of regular visits to each state party and ‘such further visits as may appear necessary from time to time’;
 - 7th and 8th sessions of the Working Group: distinction emerges between *missions* and *visits* by SPT;
 - Mexican Proposal: opt-in procedure for visits by SPT; also SPT visits become sort of a default mechanism in cases when NPMs fail to carry out their mandate effectively;
 - EU Proposal: formalises distinction between *missions* to the State and *visits* to places of deprivation of liberty within States;
 - Chair’s compromise text: the distinction dropped.



🔥 The final text of OPCAT: the mandate of SPT

- Art 11 (a)- visits to places of deprivation of liberty and making recommendations to states parties;
- Art 11 (b)- advise states re establishment of NPMs as well maintain direct contact with NPMs themselves and offer them training and technical assistance as well as advice;
- Art 11 (c)- cooperate with other relevant UN organs and mechanisms in the field of torture prevention.
- Art 13 (1)- ‘The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties *in order to fulfil its mandate as established in article 11.*’
- Art 13 (4)- SPT may propose a short follow-up visit.



✦ The interpretation of its own mandate: practice of the SPT in relation to visits

- Art 13 (2)- ‘after consultations’ the SPT should notify the States Parties of its programme of visits ‘in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted’.
- SPT’s interpretation: no prior consent of the State Party required for a visit and Art 13 (2) requires nothing more than a simple notification.
- However: *which states parties to visit?*
- Criteria for selecting states: Rules of Procedure unclear on this as only make reference to Arts. 1, 11 (1) (c) and 31 of OPCAT.
- All annual reports note the following criteria: the date of ratification, development of the NPM, geographical distribution, the size and complexity of the state, regional preventive monitoring, and urgent issues reported;
- Practical implementation: somewhat confusing as States Parties chosen for visits do not always correspond these criteria.



Visits to States Parties carried out so far

- Thirteen visits to States Parties so far (Nov 2011):
 - 2007: Mauritius and the Maldives
 - 2008: Sweden, Benin and Mexico
 - 2009: Paraguay, Honduras and Cambodia
 - 2010: Lebanon, Bolivia and Liberia
 - 2011: Ukraine and Brazil; Mali- forthcoming in 2011-?
- One follow-up visit: Paraguay, 2010
- This indicates an average of three visits per year- is this sufficient to meet the requirements of OPCAT? Article 13 (1)- programme of *regular* visits to States Parties required of SPT.
- The visiting mandate of NPMs- ‘supplement’ to the visits by SPT?



🔥 Visits to States Parties: types of places of deprivation of liberty visited*

Country	Prisons	Police custody	Other places
The Maldives	4	12	-education and training centre for children; -children's home; -detoxification centre -national Security Training Centre
Sweden	3	5	<i>none</i>
Benin	3	10	-Palais de Justice d'Abomey
Mexico	10	12	-two psychiatric hospitals
Paraguay	2	11	-neuropsychiatric hospital
Paraguay (follow-up)	1	3	<i>none</i>
Honduras	2	8	<i>none</i>

- SPT is yet to fully engage with 'non-traditional' places of deprivation of liberty
 - Art. 4: 'deprivation of liberty means *any form* of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.
- *Using the Roster of Experts: Art. 13 (3) of OPCAT*

***Information from the public reports only**



Engagement with NPMs

- All visits of SPT so far have included an ‘NPM element’:
 - Meeting with the NPM if such has been established and reporting on the appropriateness of its designation (the Maldives, Sweden, Mexico and Honduras)
 - Meeting with the prospective NPM and/or commenting on the selection process (Paraguay and Benin)
- Is this sufficient? Art 11 (b)- Advise states re establishment of NPMs as well maintain direct contact with NPMs themselves and offer them training and technical assistance as well as advice.
- Preliminary Guidelines on NPMs (2008); elaborated further at the end of 2010;
- Special Fund:
 - ‘Eligible applicants include State Parties who requested the SPT to publish their country visit reports and National Preventive Mechanisms’;
 - 4 priority areas identified: (i) notifications of fundamental rights to detainees in a language which they can understand; (ii) improving recreational and/or vocational activities for juveniles in detention; (iii) basic training programmes for detention personnel (with the inclusion of a focus on health care); and (iv) any other specific recommendation in the visit reports that details a pressing and compelling need;
 - Thus not really aimed at assisting NPMs despite Art. 26 of OPCAT: ‘as well as educational programmes of national preventive mechanisms’.



🔥 SPT and follow-up: visits and what else?

- Express mention of follow-up in OPCAT: Art 13 (4). One follow-up visit so far conducted (Paraguay, 2010); report public.
- Follow-up visits not the only means of follow-up.
- Rules of Procedure of SPT: rough outline of follow-up process to the recommendations issued after the visits to States Parties.
- More details on follow-up: challenge of confidentiality:
 - SPT's report remains confidential unless State Party requests its publication (Art 16);
 - If the report remains confidential, it is expected that the follow-up process would be confidential.
- *BUT- criteria for follow-up visit remain unclear: under what circumstances would the SPT consider a follow-up visit necessary?*



✦ Ways forward: *visits* or *missions*?

- The interpretation applied by SPT to its visiting mandate appears limited and merely linguistic;
- During its visits SPT appears to be placing emphasis on visiting actual places of deprivation of liberty as opposed to engaging with NPMs;
- However the drafting process of OPCAT clearly indicates that term ‘visits’ was to encompass more than just visits to actual places of deprivation of liberty;
- Distinction between ‘*missions*’ and ‘*visits*’ during the drafting process;
- Rationale of this distinction maintained in the final text of OPCAT:
 - Art. 13(1) notes that the programme of regular visits is to be established *with the aim of* fulfilling SPT’s mandate as established in Art. 11 of OPCAT
 - Art. 11 notes three core elements of SPT’s mandate: (i) visits to places of deprivation of liberty; (ii) assistance states on NPMs and work with NPMs; and (iii) cooperation with other UN agencies.
- Thus term ‘visits’ as per OPCAT encompasses more than just visits to places of deprivation of liberty and while SPT appears to acknowledge this in its Guidelines on Prevention, this is not yet evident in the way it carries out its visits to States Parties.



Conclusion

- SPT's ability to *visit* actual places of deprivation of liberty is crucial, especially in regions where visits by international, regional or even national mechanisms to such places are rare. But:
 - SPT ought to clarify its criteria for selecting States Parties to be visited;
 - SPT ought to be careful with its choice of types of places it chooses to visit so as to reflect the full scope of Art. 4 and to this end employing the Roster of Experts could assist.
- However there is a need for SPT to embrace the full potential of its visiting mandate and employ this to engage with States Parties on NPMs as well as work with the NPMs themselves by far more extensively during its *missions* to States Parties.
 - 'Unless the NPMs are able to fulfil their role as the on-the-spot visiting mechanisms for the prevention of ill-treatment, the work of the SPT will be seriously and adversely affected': SPT 2nd Annual Report at para 35.

