

What are the objectives of thematic session N°7?

- To examine what makes the OPCAT an innovative human rights treaty and what is its added value
- To identify the progress, challenges and ways forward in ensuring that the pioneering aspects of the OPCAT meet their potential to prevent torture in practice

Why is thematic session N°7 relevant to the OPCAT Global Forum?

The OPCAT is one of eight optional protocols to the core international human rights treaties. It is often referred to as an innovative treaty aimed at the prevention of torture and other ill-treatment (herein after "torture"). But the prohibition of torture and the obligation to prevent it is also already enshrined in a wealth of human rights instruments, including the UNCAT. So what makes the OPCAT innovative? A key aspect is that it does not create new norms but is a purely operational treaty that focuses on implementation. While other treaties also establish mechanisms to monitor their implementation (for example the CAT), the OPCAT is the first providing such detailed and practical provisions for **a proactive system** for prevention. Five years since its entry into force, it is thus worth examining how the OPCAT's pioneering aspects are working in practice and whether they are fulfilling their preventive potential, as well as ways forward in this regard.

What are the main issues to be discussed?

Seven innovative aspects of the OPCAT: are they fulfilling their potential?

- 1. The OPCAT is the first human rights treaty to provide a role for national bodies (NPMs) in its implementation.** NPMs have enormous potential to ensure national implementation of international standards relating to torture prevention, due to their understanding of the national context, ability to conduct regular monitoring of detention and engage in continuous dialogue with authorities.
 - There are now 37 NPMs worldwide, many of which are the first bodies to conduct preventive monitoring of places of detention in their countries.
 - But their potential is broader than visits: could NPMs, for example, play a greater role standard setting at the national level? Could they better collaborate to address their own challenges (by adopting guidelines, e.g. on monitoring deportation processes).
- 2. The OPCAT establishes the first treaty body with a preventive mandate.** The Subcommittee (SPT) has a new form of mandate, which is proactive and includes providing advice on torture prevention and visiting places of detention in States Parties. In contrast to the CAT or SRT, it does not need further permission from states to conduct these visits. The OPCAT contains no periodic state reporting obligation, and no international complaint procedure (unlike other treaties including the UNCAT).
 - The SPT is fully operational and regularly visits places of detention in States Parties.
 - There is room for developing and refining its broader preventive approach. For example, how much does SPT methodology differ from other treaty bodies in practice? Does it not also rely heavily on written information (reports), and suffer similar resource constraints that limit its proactive potential?
- 3. The OPCAT is the first human rights treaty focused on prevention.** It does not focus on violations but seeks to create an environment in which they are less likely to occur.
 - The OPCAT has highlighted the importance of the preventive approach in the promotion and protection of human rights, and particularly the right not to be tortured.

- The OPCAT bodies also have further potential in this field. Could they, for example, lead the way in developing jurisprudence on the prevention of torture and the standards of detention necessary to reduce the risks of it occurring? The SPT and NPMs still receive information of violations in practice – what do they do in this case?
- 4. The OPCAT establishes a triangular relationship between its three main actors** (SPT, NPMs and States Parties) by specifying obligations, corresponding duties and channels of communication between them. It thus creates formal relationships that are new in the UN system, for example between actors at the national level (NPMs and States). It also requires its treaty body to be proactive in its communications with national-level actors, for the first time.
 - While pioneering, this also creates challenges for implementation. In practice, the SPT's communications with states and NPMs outside official visits have so far been limited. Is this because the OHCHR has not initially adapted to this new type of treaty body? In addition, state authorities, which are more used to submitting periodic reports to the UN, do not always understand or fulfil the obligation to engage with NPMs after their designation.
 - 5. The OPCAT is based on cooperation and constructive dialogue with States Parties**, not condemnation and public examination of reports, as with other treaty bodies. To ensure this dialogue, States Parties are obliged to consider the OPCAT bodies' recommendations, and communications between them and the SPT are **confidential** unless they choose otherwise.
 - Cooperation between OPCAT actors appears to be positive overall, but the constructive dialogue foreseen by the OPCAT is often not fully achieved. It could be asked: is constructive dialogue possible/effective in all situations and contexts – if yes how can it be better achieved?
 - 6. The OPCAT is a practical tool that seeks to assist States Parties to implement existing obligations to prevent torture.** Unlike other treaty bodies, the OPCAT bodies have the mandate to consider all norms relevant to the protection of persons deprived of their liberty (not those contained in a particular treaty) and make recommendations on any issues necessary to strengthen this protection.
 - Thanks to the OPCAT, more bodies are adopting an approach based on holistic analysis and solution-based recommendations, rather than denunciation of failures.
 - At the same time, many authorities are yet to see the OPCAT bodies as sources of expert assistance. There is also room for NPMs to improve their expertise for finding concrete and practical solutions to reduce the risk of torture occurring, and to apply international standards relating to torture prevention to national contexts.
 - 7. The OPCAT requires its treaty body (the SPT) to cooperate with other international, regional and national institutions working to prevent torture.**
 - The SPT has developed relationships with other UN, regional and national bodies to share information on the prevention of torture. Could further synergies be facilitated and developed to better prevent torture worldwide? Although not explicitly foreseen by the OPCAT, could OPCAT bodies reach out to broader constituencies, including torture survivors and former detainees?

Five questions for debate

In addition to the questions already raised in this paper (above):

1. What makes the OPCAT **innovative** and what is its **added value**? Are the aspects above relevant and/or are there others that have not been mentioned?
2. Which aspects of the OPCAT's innovative system have been **best implemented/are fulfilling their potential** to prevent torture?
3. Which **parts of the treaty** could be better implemented? How can this be achieved?
4. Which **actors** can contribute to ensuring that the OPCAT's pioneering system fulfils its potential to prevent torture? What are their roles?
5. How could **synergies** between OPCAT bodies and like-minded organisations and institutions be facilitated and further developed, to strengthen efforts to prevent torture worldwide?