



The Subcommittee on Prevention of Torture: Guidance on the selection of candidates and the election of members

June 2010¹

Summary

Following the 50th ratification of the Optional Protocol to the UN Convention against Torture and other forms of cruel, inhuman or degrading treatment or punishment (OPCAT) in September 2009, the Subcommittee on Prevention of Torture (SPT) membership will increase from 10 to 25 members. Elections will take place on 28 October 2010. States Parties to the OPCAT will have the unique opportunity to select potentially 20 new members for the SPT. This paper aims at providing advice and guidance to States Parties regarding:

- specific skills for SPT candidates;
- national selection processes;
- the global composition of the SPT.

Introduction

The entry into force of the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) on 22 June 2006 set a new international milestone in the prevention of torture and other forms of ill-treatment. The OPCAT establishes an innovative system whereby international and national preventive bodies regularly monitor all places of detention and propose measures to prevent ill-treatment of persons deprived of their liberty. The UN Subcommittee on Prevention of Torture (SPT) is the international preventive body which comprises independent

¹ This paper has been elaborated on the basis of a previous position paper published by the APT in May 2006.

experts elected by States Parties to the OPCAT. In addition, upon ratification, States Parties acquire the obligation to establish national preventive bodies, called National Preventive Mechanisms (NPMs).

According to the OPCAT (Article 5.1.), *“the Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five”*.

The first ten SPT members were elected by States Parties to the OPCAT in October 2006². The next elections are due to take place on 28 October 2010, following the 50th ratification in September 2009. The SPT membership shall therefore increase from ten to 25 members, in 2011, and potentially 20 seats are open for change.

The October 2010 elections will be a crucial point in the life of the OPCAT and SPT. The SPT is still in a formative period in terms of its operation. Independent, professional and committed SPT members have the potential to make a difference in the interpretation of the SPT’s mandate, in the implementation of the treaty and in setting positive precedents in the prevention of torture and other ill-treatment. The experts elected will play a crucial role in the development of the SPT, in assisting to shape it by contributing to the definition of its working methods and preventive mandate.

First, according to the OPCAT (Article 6.1.), States Parties *“may nominate [...] up to two candidates possessing the qualifications and meeting the requirements set out in article 5 [see below], and in doing so shall provide detailed information on the qualifications of the nominees”*.

Furthermore, the OPCAT provides in Article 6.2. that SPT candidates should be nationals of a State Party to the OPCAT. In addition, it foresees that States Parties should not present more than two candidates, whom one of them should have the nationality of the State Party. Finally, if the State Party decides to present a candidate national of another State Party, it should seek and obtain the consent of that State Party.

² SPT members are normally granted a four year mandate. However, as provided for by the OPCAT, half of the original SPT members had a two year term and elections took place in October 2009, which led to the re-election of all of the members.

I. Specific skills for SPT candidates

Article 5 of the OPCAT already gives some indications regarding the skills and expertise which should be taken into consideration in the process of selecting, nominating and electing the members of the SPT:

[...]

2. The members of the Subcommittee on Prevention shall be chosen among persons of high moral character, having proven professional experience in the field of administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.

[...]

6 The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee efficiently.”

In addition to those criteria, the APT considers that some of the following additional elements should be considered for potential SPT candidates. The list does not intend to be exhaustive and certain skills may be more required than others.

A. Demonstrated commitment to human rights

Candidates should demonstrate a holistic understanding and commitment to prevention of torture and other forms of ill-treatment. They should develop a vision of the SPT mandate and be willing to contribute to the shaping of the SPT in its first years of operation.

B. Professional skills

Candidates could have the following professional skills:

- Relevant medical experts on related issues (medical doctors, especially psychiatrists, clinical forensic doctors, paediatricians, geriatric specialists and specialists in the fields of public health and infectious diseases; mental health specialists, including clinical psychologists and mental health nurses);
- Legal experts in fields including international human rights, humanitarian and refugee law and administrative law; former prosecutors, public defenders or judges; experts in juvenile justice;
- Experts in policing and administration of places of deprivation of liberty, including police stations, prisons and psychiatric institutions;
- Any other relevant professions, for example, social workers, anthropologists, education and training specialists.

C. Expertise

- Experience in monitoring places of detention at the national level;
- Drafting and analytical skills for research, report writing and editing;

- Experience working with a wide range of stakeholders, including high level governmental officials, detaining authorities, persons deprived of their liberty and potentially vulnerable or marginalised groups³.

D. Status and availability

- Be available upon request to conduct several missions a year and participate in three meetings of the SPT each year in Geneva;⁴
- Be financially autonomous;⁵
- Be independent and impartial.

E. Additional skills and expertise

- Proficiency in UN languages;⁶
- Negotiation skills;
- Be a team player;
- Be culturally sensitive;
- Capacity for empathy;
- Be able to cope in stressful situations and environments.

II. Proposed national selection process

SPT members are nominated and selected by States Parties to the OPCAT. The APT encourages States Parties to engage a participative, public and transparent national selection process of SPT candidates at domestic level. This process should ideally include a public call for candidate and the establishment of a selecting committee as described below. This process should contribute to strengthen the mandate, credibility and legitimacy of the SPT individual members and hence, the whole SPT.

A. A public call for candidates⁷

- Public announcements should clearly lay down criteria mentioned above;
- States Parties should encourage the promotion of female candidates and minority groups as well as candidates from various professional backgrounds;

³ This group would include migrants, women, children, persons with physical or mental disabilities, indigenous peoples, and national, ethnic, religious or linguistic minorities.

⁴ SPT members are expected to be available for three sessions of one week per year, and at least one in-country visit per year (approximately two weeks, including preparation and follow-up). SPT members may also receive ad hoc invitations to participate in seminars, conferences and trainings related to OPCAT development. Therefore, SPT members should be available on a basis of six to eight weeks per year.

⁵ The SPT members do not receive any fee for their participation in the SPT sessions and in-country missions. However, they receive plain ticket and a United Nations daily subsistence allowance (DSA) for their participation in the specific activities mentioned previously.

⁶ English, French, Spanish, Arabic, Chinese and Russian.

⁷ For instance, in 2006, Mexico and the United Kingdom published an advertisement in various newspapers to call for SPT candidates.

- States Parties should encourage civil society organisations to propose candidates;
- The process should guarantee the equality of conditions and treatment of the candidates.

B. Selecting committee

In order to ensure transparency and objectivity of the selection process, good practices suggest that SPT candidates should be selected according to the following steps:

- A selecting committee could be established gathering representatives from the relevant ministries in charge of the process of selection⁸ as well as representatives from civil society organisations with relevant expertise;
- The selecting committee should have the authority to make a selection from the different candidates, and this decision should be final;
- The decision regarding the candidates should be made public.

C. Nominations of candidates

- The candidacy should be submitted by the Ministry of Foreign Affairs to the United Nations Secretary-General, c/o Office of the High Commissioner for Human Rights (OHCHR), United Nations Office at Geneva, 1211 Geneva 10, Switzerland, and in electronic Word document version to mkierulf@ohchr.org, with a copy to evaldiviadefyfe@ohchr.org;
- The candidacy should be submitted by 11 August 2010 at the latest.
- The biographical data of nominated candidates should not exceed 38 lines.
- All documents relating to the elections will be available on the website of the OHCHR, <http://www2.ohchr.org/english/bodies/cat/opcat/elections2010.htm>

III. The global composition of the SPT

The OPCAT (Articles 5.3 and 5.4) specifically encourages States Parties to give due consideration to the global composition of the international preventive body:

3. *“In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.”*

4. *“In this composition consideration should also be given to balanced gender representation on the basis of equality and non-discrimination.”*

The SPT must carry out and be seen to carry out its mandate in an impartial way. This is crucial in order to facilitate the development of a constructive dialogue with

⁸ The Ministries in charge of selecting the SPT candidates are usually the Ministry of Foreign Affairs and / or Ministry of Justice.

States Parties, NPMs and other stakeholders. Ensuring the global composition of the SPT will contribute therefore to the effectiveness of the preventive body. During the election process, States Parties should take into account the following elements:

A. Regional balance

The SPT has the potential to operate in all regions of the world, mainly through in-country visits to States Parties to the OPCAT. The SPT approach to its mandate and to prevention of torture in general should not be seen as dominated by one particular region or country focus. Therefore, an equitable geographic distribution should be guaranteed within the SPT to strengthen its impartiality and effectiveness, as provided in Article 5.

B. Gender balance

Visiting places of deprivation of liberty is at the core of the SPT mandate. Experience has shown that a gender-balanced visiting team has strong assets, more particularly when operating in different cultures and national contexts. The OPCAT strongly encourages States Parties to give due consideration to the gender balance of the whole SPT, bearing in mind the principles of equality and non-discrimination.

C. Balance of professional expertise

The specificity of the SPT mandate requires experts to be able to analyse the situation of prevention of torture and ill-treatment and various types of places of detention in any given country of the world. States Parties should guarantee the representation of diverse civilisations, professional backgrounds, legal systems and languages during the election process of the SPT members.

IV. Conclusion

The APT is confident that if States Parties follow the above proposed recommendations, regarding specific skills for SPT candidates, national process of selection and the need for global composition of the SPT, they will contribute to strengthening the enlarged SPT in October 2010, thus making it a more effective preventive body.

