



Providing the Subcommittee on Prevention of Torture with Experts

Association for the Prevention of Torture (APT) Position paper May 2007

The Optional Protocol to the United Nations Convention against Torture (OPCAT or the Protocol) in force since 22nd June 2006 constitutes a major step forward in the prevention of torture and other ill-treatment by establishing a system of regular visits, by complementary international and national independent experts bodies to places where people are deprived of their liberty.

Pursuant to the OPCAT, the Subcommittee for the Prevention of Torture (SPT) was established on 18th December 2006. Its ten members¹ held their first session from 19th to 23rd February 2007 and intend to carry out their first in-country visits during the second half of 2007.

On the basis of Article 13.3 of the Protocol, the SPT members *“may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the field covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by States Parties, the Office of the High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts (...)”*.

The present paper explains the role of such experts and provides guidelines about desired profiles and the process for nominating the experts.

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1- The role of external experts : to enhance the effectiveness of the SPT

The inclusion of Article 13.3² of the OPCAT, which is similar to Article 7.2 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT)³ as well as to the Rules of Procedure of the Committee against Torture⁴ was based on two assumptions: firstly, that the members of the Subcommittee would be few in number and that they would be physically unable to perform all the duties on their own; and secondly, that the members could not possibly be expected to have the full range of professional expertise required in all the relevant fields⁵.

Given the current membership of the SPT, such external assistance will be absolutely crucial for the same reasons. Firstly, until the 50th ratification of the OPCAT (when the membership will increase to 25), the SPT has only 10 members far short of what would be required to undertake regular visits the present 34 States Parties (as of 20 May 2007) without additional support from experts. Secondly, and more importantly, among the current members there are eight lawyers and two medical doctors. Notwithstanding the extensive experience and the commitment of the current members, the SPT is thus not in a position to deploy multidisciplinary teams without additional experts.

The experts referred to in article 13.3 will be part of the visiting teams and will accordingly have the same rights and duties as the SPT members. On the one hand, they will be entitled to the facilities, privileges and immunities of experts on mission for the United Nations, as laid down in the relevant sections of the UN Convention on Privileges and Immunities of the United Nations⁶. On the other hand, they will be required to perform their functions honestly, faithfully, independently and impartially, and they will respect the confidentiality of the proceedings⁷. Furthermore, to ensure consistency of visiting methods, it will be essential that the experts receive the same training as the members of the SPT.

² Article 10.1 of the initial draft Optional Protocol stated already : *“As a general rule, the mission shall be carried out by at least two members of the Subcommittee, assisted by experts and interpreters if necessary”*, E/CN.4/1991/66.

³ Article 7.2 : *“As a general rule, the visits shall be carried out by at least two members of the Committee. The Committee may, if it considers it necessary, be assisted by experts and interpreters”*.

⁴ CAT/C/3/Rev.4, Rule 82-1 : *“In addition to the staff and facilities to be provided by the Secretary-General in connection with the inquiry and/or the visiting mission to the territory of the State party concerned, the designated members may invite, through the Secretary-General, persons with special competence in the medical field or in the treatment of prisoners as well as interpreters to provide assistance at all stages of the inquiry.”*

⁵ See E/CN.4/1995/38, para. 40; see also Explanatory report of the European Convention on Prevention of Torture states regarding Article 7.2 : *“The underlying idea is to supplement the experience of the Committee by the assistance, for example, of persons who have special training or experience of humanitarian missions, who have a medical background or possess a special competence in the treatment of detainees or in prison regimes and, when appropriate, as regards young persons”*.

⁶ See CAT/C/3/Rev.4, Rule 82-3 as well as Article 16 of ECPT.

⁷ See by analogy CAT/C/3/Rev.4, Rule 82-2 and Article 14.2 of the ECPT.

1.1- Ensuring adequate support

As indicated above, visits to closed institutions in order to monitor conditions of detention and to prevent torture and ill-treatment require a multidisciplinary visiting team with experts with different professional skills and/or experiences.

Indeed, depending on the places to be visited but also on the context of the visit, the Subcommittee will require different types of professional skills including :

- medical doctors, especially penitentiary doctors, psychiatrists, nurses in psychiatry, clinical forensic doctors and specialists in public health;
- psychologists;
- people with a legal background, especially lawyers, former prosecutors, public defenders or judges;
- anthropologists;
- social workers.

In the same manner, persons with prior professional experience in policing, administration of prisons and psychiatric institutions or persons with prior experience working with particularly vulnerable groups (such as migrants, women, juveniles, persons with physical or mental disabilities, indigenous peoples, and national, ethnic, religious or linguistic minorities) will also be required.

In addition these professional skills and experiences, the external experts shall also have certain personal skills, in particular the capacity to interact with people in a manner respectful of their human dignity. Furthermore, as for the SPT members themselves, these experts should be truly independent, team players as well as physically fit and mentally stable.

Lastly, but as importantly, it will be important to identify experts with relevant language skills whenever appropriate in order for the SPT to engage directly with the persons they meet during their visits. However, these experts should also be fluent in at least one of the working languages of the SPT (i.e. English, French, and Spanish) in order to avoid, if possible, additional interpretation implications within the visiting team.

1.2 - A better gender and geographic balance

Providing additional experts will also be a way to improve the current gender and geographic balance within the SPT.

Experience has shown that having a balance between male and female members in a visiting team is a great advantage. Moreover, given the current lack of gender balance in the SPT (eight men and two women), it will be crucial to seek assistance, as a matter of priority, from female experts.

Given the universal nature of the OPCAT, it is a current weakness of the SPT that members come exclusively from Western and Eastern Europe and Latin America⁸. Accordingly, this issue should also be addressed by identifying experts from other regions.

2- Identify relevant experts

Article 13.3 of the OPCAT identifies three main categories of actors who should be involved in providing the SPT with names of suggested experts: States Parties, the Office of the High Commissioner for Human Rights (OHCHR), and the United Nations Centre for International Crime Prevention.

The three actors should fully take into consideration the specific needs of the SPT and professional and personal skills identified above.

2.1- The role of States Parties

As Parties to the OPCAT, States have a primary role to play in the implementation of the Optional Protocol. In that regard, making sure the Subcommittee gets enough expert support is key.

In that regard, the APT would like to emphasize the following three points :

- NGOs, academic institutions, legal and medical associations, national human rights institutions, and organizations that already carry out visits to places of detention should be consulted by States Parties and invited to put forward names of experts.
- Though they are limited to nominating no more than five of their own nationals, nothing impedes the States Parties from nominating experts from other States Parties or even from non States Parties. Given the current status of ratification with a majority of States Parties from Western and Eastern Europe and Latin America, and bearing in mind the need to improve geographical balance, it would be unwise to limit the experts to nationals of current States Parties.
- The names of the experts identified should be sent to the Secretariat of the SPT. States should include very precise information about the areas of expertise of these persons, as well as their contact details.

2.2- The role of OHCHR

The OHCHR has also a crucial role to play in a) identifying experts and b) managing the roster.

Like the States Parties, OHCHR has the duty to identify relevant experts able to assist the SPT members during their visits. Moreover, there is no limit to the number of experts the Office can put forward.

⁸ Albania, Argentina, Armenia, Benin, Bolivia, Brazil, Cambodia, Costa Rica, Croatia, Czech Republic, Denmark, Estonia, Georgia, Honduras, Liberia, Liechtenstein, Mali, Maldives, Malta, Mauritius, Mexico, New Zealand, Paraguay, Peru, Poland, Republic of Moldova, Senegal, Serbia, Slovenia, Spain, Sweden, Ukraine, United Kingdom, Uruguay.

Accordingly the Office should invite its field missions, other UN agencies (UNICEF, UNHCR, UNDP, World Health Organization...) and all its partners from civil society both at the international and national levels to identify such experts. More specifically, the Office should give due attention to the geographic diversity of the visiting teams.

The Office should also encourage States Parties to put forward names of experts.

The management of the roster is another crucial element. The Office of the High Commissioner, in very close cooperation with the SPT members, will have to identify the best experts put forward and keep the list up-to-date with very precise information about the skills and experiences of the experts to match with the places to be visited in a particular country visit.

2.3- The role of the United Nations Centre for International Crime Prevention

Given its area of expertise, the United Nations Centre for International Crime Prevention should also provide the roster of experts with the names of persons able to assist the SPT, especially in the area of police and penitentiary services.

The regional offices of this Centre, as well as its extensive network of national contacts, should be taken into account in this process. Names of recommended experts should be communicated to the SPT Secretariat.

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