

**'OPACT in the OSCE region: What it means and how to make it work?'**

**Summary and recommendations  
from the Conference held on 25-26 November 2008,  
Prague, Czech Republic**

A two day conference was held from 25-26 November 2008 in Prague, Czech Republic to examine the challenges of implementation of the Optional Protocol to the UN Convention Against Torture (OPCAT) in the region of the Organisation for Security and Cooperation in Europe (OSCE), with specific emphasis on the countries that have signed or ratified the instrument. It was organised by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) and the OPCAT research project team of the Law School of the University of Bristol. It saw participation of some 80 participants from governments, national human rights institutions, Ombudsman offices, potential and existing National Preventive Mechanisms (NPMs) and national and international civil society organisations, as well as representatives from the Subcommittee on Prevention of Torture (SPT), the European Committee for the Prevention of Torture (CPT), the Office for the United Nations High Commissioner for Human Rights (OHCHR), the International Committee of the Red Cross (ICRC), and academics. For a list of participants see Annex I. The event was funded by the Foreign and Commonwealth Office (UK) and the Arts and Humanities Research Council (UK).

The conference was arranged into plenary sessions in the morning of the first day and the afternoon of the second (final) day. There were four workshops overall, two in the afternoon of the first day: one dealing with the issues surrounding the designation of Ombudsman offices as NPMs and the other one discussing the modalities of the NPM operation. There were two workshops in the morning of the second (final) day of the conference: one examining the involvement of the NGOs in the work of the NPMs and the other one looking into the issue of prevention. A copy of the Agenda is included as Annex II.

This report attempts to summarise the discussions that took place during this two day event and to present practical suggestions and recommendations that arose. It is divided into a number of thematic areas, based on the focus of debates.

**1. The 'added-value' of the OPCAT to the countries of the OSCE region.**

It was reiterated that the OSCE region is governed by the general prohibition on torture and other forms of ill treatment and those prohibitions are found in the provisions in UNCAT, ICCPR and the ECHR. The SPT is only but one of many

international actors working in this area with the ICRC, the UN Special Rapporteur on Torture and the CPT.

It was noted that the work and expertise of the CPT has had significant impact on the countries of the OSCE region in the field of torture and ill treatment prevention, but it was also emphasised that the reach of the OSCE stretches beyond the area of the Council of Europe and thus when discussing the OPCAT in the OSCE region one must not forget to include countries outside the remit of the Council of Europe. Thus, as the SPT is a body with a global reach, whose work includes cooperation with the Inter-American Commission on Human Rights and the African Commission on Human and People's Rights, among others, the OPCAT may offer richer insights into various ways of preventing torture and ill-treatment.

The participants remarked that the OPCAT represents a unique and brave vision of a preventive system; a system that brings together actors from the international and national level. It was acknowledged that preventive visiting is not new for either international or national bodies. At the same time, however, it is an ongoing development as new actors join and give new impetus to the system. Thus the 'scene is set' for the new actors, the NPMs, which can provide effective safeguards 'on the ground' as no international mechanism can be a substitute for vigilance at home. The NPMs were acknowledged as the central or most important actors in the prevention of torture and as the new, additional legal obligation imposed by the OPCAT on the states parties. It was noted that introduction of NPMs will allow States to carry out visits on a truly regular basis and in this way NPMs can be said to encourage transparency which in turn is said to assist in eliminating torture. The provision for the designation of NPMs is therefore the main feature that distinguishes the OPCAT from the CPT.

This was also reiterated from the perspective of the government: the countries that are subjected to the scrutiny of the CPT do not necessarily choose to become parties to the OPCAT because they see the need for more monitoring, but because of the benefit of having NPMs which will have a constant presence in the country and thus ensure true regularity of visits to places of deprivation of liberty. In contrast, CPT visits a country only every six years or so. Moreover, ratification of the OPCAT also acts as a kind of a guarantee that should the domestic situation in a given country change and the existing mechanisms of monitoring fail for one reason or another, there is an international body to rely on.

Furthermore, the international value of the OPCAT was also underlined: even if monitoring of places of deprivation of liberty at the domestic level works well, it was acknowledged that this is not the case in all countries around the world. Therefore ratifying OPCAT sends a clear and strong message to all states around the world about the importance of this instrument in the fight against torture prevention.

When discussing the existing practice of the CPT it was reiterated that visits are made on a periodic basis as far as possible. The CPT has the possibility to follow up on previous visits, it has unlimited access to all various places of deprivation of liberty and has the powers to carry out interviews in private. These are important points when carrying out a visit, with the expectation being that there will be a dialogue with the authorities too. The dialogue with authorities is essential and goes to the core of the principle of cooperation as the aim of preventive visiting is not to condemn but to find solutions. The working methods of the CPT are to meet in camera and the discussions do not fall into the public domain until the state has

authorised the CPT. The CPT can, however, make public statements, but so far has used this tool cautiously and only when really necessary.

However, since many states of the OSCE region are parties to both the CPT and the OPCAT, it is important that the two treaty bodies make it clear how, if at all, they intend to work together. Otherwise the situation can be rather confusing for the state which may be facing different interpretations as to what the prevention of all forms of ill-treatment means. There is a close relationship between the SPT and the CPT but under Article 31 of the OPCAT there is an obligation on the SPT not to duplicate the work of other bodies and this is particularly important as the SPT has such scarce resources. As such, there is a need to be creative and avoid duplication. Thus the challenge is to find a fruitful synergy between the two bodies that ensures that there is consistency in the messages that come from both.

It was acknowledged that the SPT and the CPT are already working together and provide a forum where actors in the field can come together to talk about how they carry out their work. The need for coherence between the approaches of the CPT and SPT was underlined and it was noted that there has been a deliberate approach through the CPT reports to see if there is additional value of the SPT making recommendations on top of those of the CPT. On this matter it was noted that the SPT reports can add an additional pressure on the state concerned to overcome difficulties and address the problems that have been pointed out. It was also noted that there is a scope for the CPT to work together with the NPMs, but this needs to be discussed further within the CPT.

In terms of the cooperation between the two bodies, three specific areas were highlighted: the coordination of activities; the exchange of information and maintaining the consistency of standards.

It was noted that at the time of the conference, there were 19 states that are subjected to the provisions of both treaties and that both treaty bodies have their own visiting programmes. In future the focus and timings of visits must be considered so as to compliment each other's work, as neither body can visit all states or concentrate in detail on all aspects or all variety of places of deprivation of liberty. Nevertheless it was noted that even though a visit has been carried out by the CPT it can be good to have an SPT visit too or vice versa. Indeed, it was noted that the CPT visits for 2009 have been released and among the states to be visited is Sweden, which has been visited by the SPT in the spring of 2008. The decision to visit Sweden by the CPT had been influenced by two considerations: first, the country was last visited by the CPT in 2003, so a considerable period of time had passed since the last visit and it was deemed unnecessary to wait until 2010 or 2011 only because the country had been recently visited by the SPT. Secondly, such a short period of time between the visits of the two treaty bodies was seen as a challenge for the CPT to examine how the two bodies can manage the new situation when the region has two visiting bodies.

In terms of information exchange, it was noted that this matter has been discussed in the 16<sup>th</sup> Annual General Report of the CPT, where it was argued that if a country is bound by both treaties, the CPT reports could be forwarded to the SPT on a confidential basis if the SPT is planning a visit to the said country. It was however acknowledged that when the proposal about making CPT reports publicly available was first made in 1992, the CPT had noted that it would be the decision of every state party as to whether such information sharing can happen. It was noted that no

state party took up this proposal and thus the issue needs careful consideration. There may be obstacles in national legislation that may prevent such sharing of confidential reports- a report shared with another treaty body may be considered to have been made public, for example. Moreover, the practical need for sharing reports was questioned: if the two bodies coordinate their visits so that they do not visit a country in the same year, taking into consideration that the CPT normally publishes its reports within one year, this would mean that by the time the SPT wishes to visit the said country, the report would be in the public domain already.

The necessity to avoid duplication and having double standards was highlighted. However it was underlined that in cases when a state is struggling with the implementation of recommendations, it should be allowed extra time, but such a situation should not lead to lowering of the standards. The two treaty bodies should also cooperate in following up their recommendations.

In terms of training, it was noted that the SPT and CPT could also cooperate with the use of experts in the training of the NPMs. There was a feeling that it would not be appropriate for the CPT to recommend the ratification of the OPCAT. Nevertheless, if a country visited by the CPT has an NPM, the CPT would be able to engage with it. Indeed, this has already been done by the CPT in respect of some of the countries it has visited.

The role of the ICRC was also discussed and noted as crucial in the development of the SPT to which the ICRC has provided considerable support. The SPT has had opportunities to draw from the experience of the ICRC and its field presence has added a very important dimension. Having such field officers on the ground and the expertise and resources of the ICRC was noted as essential in adding to the understanding of the local situation and actors. Similar remarks were made in respect of the OSCE, which also has many field offices. The need for a concrete plan on how these bodies can work together on the ground was noted and it was also acknowledged that the NPMs should grasp the opportunities that such field offices provide.

## **2. Some over-arching issues surrounding the National Preventive Mechanisms.**

The OPCAT does not contain a clear and detailed prescription as to what constitutes an NPM, rather the states are given considerable freedom and flexibility in choosing an NPM that would suit the specific needs of the country. The countries represented in the event this far had shown preference to designating Ombudsman offices as their respective NPMs. For some, this had been a pragmatic solution: the provisions of OPCAT do not require a creation of an entirely new body. Rather the countries are free to adapt the existing ones to the requirements of the OPCAT. This latter point must not however be taken lightly- as practice shows, existing institutions do not always represent a perfect match. Some have a weak methodology, some have too narrow a mandate, some lack the sufficient expertise etc. Therefore careful consideration must be given as to how to adapt these so that they would correspond to the requirements of OPCAT and it is thus important that prior to the designation extensive consultations are carried out with all the relevant stakeholders.

Special note was taken of the Paris Principles and the mention of this instrument in the text of OPCAT as the document states parties are to give due consideration to when designating an NPM. It was acknowledged that there is a lot of cross-over between the Paris Principles and requirements of OPCAT, but the two instruments are not a perfect match. The importance of examining the body not only on the basis of the legal documents but also on the basis of its actual performance, its effectiveness on the ground, was highlighted.

The importance of a designated a body that would have all necessary powers and tools to carry out its tasks was noted. The NPMs must be given powers of unrestricted access to all places of deprivation of liberty, which includes also unofficial places that are found to exist, even if such places are not formally listed anywhere. The mandate of the NPMs to make unannounced visits was also noted as well as access to independent experts with relevant backgrounds. In terms of resources, it was acknowledged that if an existing body is taking on an additional preventive role, then there is a need for specific allocated resources over and above those currently existing. Preventive visiting is not resource neutral and the NPM must be enabled to do preventive visiting: this is an obligation of the state party. Once this is met, it is the obligation of the NPM to actually carry out this preventive mandate.

It was however stressed that the aim of the OPCAT is prevention and visits are only part of that preventive mandate. It is very important that any NPM looks to the broader picture of prevention under the OPCAT. There is no question that the NPMs are the most important aspect of the OPCAT setup since they carry out the day to day work, are tailored to the particular country's needs, and know the specifics and intricacies of the system. It needs to be ensured that there is an interactive dialogue which aims to achieve prevention. The NPM can become the focal point for the dialogue with states, NGOs and other interested parties. The NPM can also be a very important partner for regional bodies like the CPT.

Moreover, if existing bodies, like Ombudsman Offices are considered for the role of the NPM, the process of consultation also represents an opportunity to re-visit the mandate and work of the existing institution beyond the remit of what is required of it as a potential NPM. Thus the process of implementation of the OPCAT in a country may have wider implications and present an opportunity to address the shortcomings of its institutions in other aspects as well.

It was also acknowledged that the designation of a body or various bodies as constituting the NPM for a country should not be taken as a 'done deal'. Rather, NPMs and their work should be looked at as 'work in progress', the NPMs must be acknowledged as developmental entities whose mandates and working methods are re-visited periodically to ascertain whether some adjustments may be necessary. The NPMs are developmental also in the sense of changes and improvements that may come about through additional training, exchanging experiences and know-how with other NPMs of the region and beyond. It was noted that it takes experience and mistakes before a visiting body becomes effective and can engage in preventive work effectively. For example it can happen that a body starts with one reasonably good visit and then next time has a very bad experience. There is a need for outside advice in order to effectively visit, as well as a need to be self-critical. It is absolutely vital when considering the NPM that attention to detail is kept at the fore and even when an NPM has been designated that the discussions are not closed as gaps and further aspects might be found afterwards.

### **3. Ombudsman's offices as National Preventive Mechanisms.**

It was noted that many countries of the OSCE region have Ombudsman Offices, some with decades long experience and some set up relatively recently. To consider the Ombudsman Offices as potential NPMs has thus been a natural reaction of the governments, especially taking into consideration that these bodies in some countries already engage in work related to the prevention of torture and ill-treatment.

When considering the reasons behind designating Ombudsman Offices as NPMs, three main aspects were emphasized. Firstly, Ombudsman Offices can be perceived as independent human rights mechanisms in some countries, and may therefore be a very solid foundation on which an NPM's work could build. Secondly, there is the issue of resources: Ombudsman Offices normally already have staff and facilities and thus allocating the NPM tasks to Ombudsman Offices would not be as taxing on resources as the creation of a totally new body. Thirdly, creating a new institution, can raise some questions as to how this new body will fit in the system that exists in the country and whether it could undermine the work that has been carried out by the Ombudsman Offices and/or other visiting bodies.

The first issue that was discussed concerned the focus of the mandate: traditionally, the Ombudsman offices are charged with a reactive mandate, i.e., these institutions deal with complaints. The OPCAT on the other hand requires a preventive approach, which in turn seeks pro-active engagement with authorities. The NPMs are to visit places of deprivation of liberty, a task that many Ombudsman Offices of the region already engage with, but the requirements of OPCAT for an NPM go beyond visiting. The NPMs are to carry out preventive work which may include such activities as educational campaigns, comments of draft and/or existing legislation and working with the authorities at the policy level. The challenge for the Ombudsman Offices is how to adapt to this as that will require not only a shift in terms of ethos of the institution, but also in terms of thinking and methodology. The Ombudsman Offices represented at the event all noted that the preventive work as per NPM mandate has required a shift in their existing practices.

A similar challenge to this may be posed by the fact that many Ombudsman offices possess quasi-judicial powers, such as powers to issue reprimands. This may create a certain contradiction when the office is designated as an NPM and must engage in a dialogue with authorities on a pro-active basis. Thus the Ombudsman Office may be confronted with the difficulty of how to reconcile this preventive role with its quasi-judicial powers. A number of the Ombudsman Offices represented at the event noted that they have deemed it necessary to separate the complaints and visiting mandate by going so far as creating separate divisions for the NPM work.

The issue of independence was also discussed. Although there may be a perception in some countries that, traditionally, Ombudsman offices enjoy considerable independence, careful consideration must be given to this aspect: governments must commit support to the NPM but also maintain their distance so as not to jeopardize the independence of the body. Also, while the OPCAT requires the states parties to give due consideration to the Paris Principles, mere compliance with the Paris Principles should not be taken at face value as the Paris Principles and the

OPCAT are not a perfect match. The prime consideration must be the actual independence and effectiveness of the NPM on the ground.

The aspect of legitimacy in terms of Ombudsman Offices as NPMs was discussed: the OPCAT requires that the NPM is representative both in terms of the society so as to include gender and minorities representation, as well as in terms of expertise. The NPMs are to be inclusive bodies. Ombudsman Offices, however, are normally headed by one person, who is in turn supported by staff. It was noted that this must be carefully considered so as to ensure that at least the Ombudsman Offices, if designated as NPMs, represent the diversity of expertise that is required by the provisions of OPCAT. Most of the Ombudsman Offices represented at the event noted that there has been a practical need to address this aspect by hiring additional members of staff or making the necessary provisions in the legislation so as to enable the Ombudsman to contract-in the required expertise for the NPM work.

It was noted that while many Ombudsman Offices carry out visits to places of deprivation of liberty, the OPCAT prescribes a very wide definition of 'deprivation of liberty' and thus an NPM must carry out visits to a rather large variety of places, such as prisons, police cells, psychiatric hospitals, migrant detention centres, etc. Moreover, this mandate should also extend to unofficial and private places of detention. Thus, if Ombudsman Offices are designated as NPMs it must be ensured that they are given the necessary powers to carry out unannounced, regular visits to all places of deprivation of liberty.

It was acknowledged that all these NPM tasks, even if entrusted to the existing Ombudsman Offices, may require changes in existing legislation as well as budget adjustments so that the Offices are actually able to carry out the additional NPM tasks. However, the conference also warned not to perceive the designation of the Ombudsman Offices as an NPM as 'the end': the challenge lies with the need to make sure that there is a timely, careful and inclusive review of the NPM and that it is given legal status. The review should lead to draft amendments when needed. It must be acknowledged that NPMs are unlikely to be perfect mechanisms at their inception even if they are Ombudsman Offices with decades of experience and thus all NPMs must be perceived as 'work in progress'.

#### **4. The involvement of NGOs in the work of the National Preventive Mechanism.**

The conference distinguished three levels of the NGO involvement in the work of the NPM: the NGOs can provide experts for the work of the NPM; the members of the NGOs may be involved in the work of the NPM; or the NGO can be part of the NPM. These various models presume a different level of formal engagement of NGOs with the NPM, but it should also be acknowledged that NGO work in many countries is bound to feed into the work of the NPM- and was acknowledged as invaluable.

Considerable attention was devoted to discussion of the so-called 'Ombudsman Plus' models where the Ombudsman Office is designated as NPM in tandem with the NGOs. The examples of Slovenia and Moldova in particular who have chosen this path were considered. The aspect of inclusiveness was discussed: how to ensure that relevant NGOs are included in the NPM? In Slovenia this was done with the help of open tender whereby NGOs and others could bid if they fulfilled pre-set criteria.

The issue of financing was discussed: the NPMs are to be provided with the necessary resources, but there was a considerable discussion whether the individual members of the NPM ought to receive remuneration for their work. It was a particular issue in case of the NGO involvement in the NPM work as it was felt that receiving remuneration could be perceived as impediment to their independence.

The question of immunities for those in NPMs was also discussed: Article 35 OPCAT requires that the NPM members shall be accorded privileges so that they can carry out their functions. There is a Convention obligation on states, therefore, to give privileges and immunities. The scope of that provision is not, however, clearly articulated and this is of particular importance to NGO members who are part of an NPM.

Certainly, the role of the NGOs is also to act as a watchdog in relation to the NPM and engage with bodies like the SPT and CPT.

## **5. The meaning of the concept of prevention.**

It was noted that the legal concept of prevention is a positive obligation that stems from such international and regional human rights instruments as the ICCPR, UNCAT and the ECHR as well as from the jurisprudence of the treaty bodies of such instruments. The concept of positive obligation encompasses not only the obligation to refrain from certain actions, but also the obligation to engage actively so as to ensure respect for the rights. The focus of prevention is on the future rather than looking at the consequences of abuse. The difference in such approaches may be found in the working methods of various bodies. The example of the *Ocalan* case was discussed: whereas the ECtHR did not consider the detention of Mr Ocalan to constitute a breach of Article 3 and looked at the issue of whether a breach has occurred, the CPT, looked at whether the state was in breach of its obligation to prevent torture. This case illustrates how two bodies dealing with the same case had reached different conclusions,

The provisions of OPCAT do not require a creation of any particular type of body, but rather a body which would engage in preventive work. This is the main rationale of OPCAT and thus is also the main rationale of any NPM. The conference recognised that this is a very crucial aspect that must be given very careful consideration when a state is looking for an NPM, whether that would involve designation of an existing body or creating a new body. Since the countries present in the event were dominated by Ombudsman Offices being designated as the NPM or taking part in the NPM, the focus of the discussion on the issues of prevention centred on how the preventive mandate translates in the work of the Ombudsman Offices.

It was first of all noted that although Ombudsman Offices engage with torture and ill-treatment issues, they do this traditionally through a complaints system. Dealing with complaints certainly has a role to play in prevention, it constitutes indirect prevention and thus is only one part of the whole range of activities that can and should be undertaken under the umbrella of preventive work. The NPMs are to engage in direct prevention through preventive visits; engagement in ongoing dialogue with authorities; by issuing recommendations; making public their reports; giving comments on existing and draft legislation; taking part in forming government

policies; engaging in educational and awareness raising activities and so on. The conference participants shared their experiences as to how their respective Ombudsman Offices had adapted to this new role, all noting that adjustments had been necessary and that none was able to carry on with business as usual' after being designated as NPM or as part of an NPM.

The role of confidentiality in prevention was discussed and its delicate nature was highlighted: while many felt that transparency is a necessary attribute for the work of the NPM, the successes that have been achieved through confidential engagement with authorities was emphasised. It was noted that the rule of confidentiality and not letting all the information into public domain, enables states to move on, which 'in the light of day' they may be reluctant to. The principle of confidentiality may also be useful for the NPM which may engage in more open and frank discussions with the authorities in private.

Turning to the specific activities of prevention, visiting was noted as the primary work of prevention. The question however arose as to what constitutes a preventive visit to a place of deprivation of liberty? The main distinguishing feature noted was the need for the NPMs not only to examine the physical treatment of those deprived of their liberty, but also engage with the wider issues of the regime, and look at the problems from broader, more systemic perspective. This must also be reflected in the recommendations of the NPM, which can be made on two levels: first, offering concrete examples of how to improve specific aspects; second, to identify gaps in legislation and policy, thus addressing the bigger issues.

The importance of always remembering that the focus of the visit must be prevention was highlighted and it was noted that for visiting to have preventive effect it must be regular and to this end many participants shared the need to have a plan of visits that is prepared a considerable period of time in advance. Certainly such planned visits must not prevent *ad hoc* visiting or visits in response to allegations of ill-treatment however long term planning was noted as essential for the success of preventive visiting.

It was noted that preventive visits must not be perceived as an aim in themselves, but rather as a tool which is used to find shortcomings and identify gaps. It was noted that visiting can facilitate awareness raising through an obligation to publish NPM reports. The participants noted that it is important that reports of visits are distributed widely and not only given to the authorities of any given institution. Such reports offer an important source of information for other stakeholders.

The importance of the powers of the NPM to engage with the legislative framework and significance of this for preventive work was also highlighted. To this end it was stressed that OPCAT requires NPMs to be given powers to comment on existing and draft legislation.

As an additional layer of prevention, the practice of self-auditing which is undertaken by some places of deprivation of liberty themselves in certain countries was noted. Such activities were said to add to the work carried by NPMs, regional and international visiting bodies. However, while noting that such self-auditing constitutes a good practice, it cannot be considered as a substitute for national or international monitoring.

## **6. Recommendations and follow-up.**

The recommendations being suggested below arise out of the discussions that took place at the event and draw out some common concerns and issues highlighted during the debates. They offer some suggestions by the Bristol University OPCAT team on how to move OPCAT forward in the region:

### **(a) Designation of the NPM:**

Overall there was a need to recognise that the development of NPMs is a process and not an end in itself. This means that mere designation of a certain body or bodies as NPMs for any given country is a decision that should be revisited after a period of time. To this end:

- (i) review of the work and mandate. It may prove useful to revisit the mandate of the NPM so as to ascertain if the one that has been set out fits the requirements of the OPCAT and the realities on the ground. This may involve changes in the working methods of the NPM thus requiring internal adjustments or may call for some wider amendments in the legislation.
- (ii) review of the composition of the NPM. The designation of a body as an NPM initially should not be taken to mean that other bodies operating in the area of torture and ill treatment prevention and/or carrying out visits to places of deprivation of liberty must cease their work. There is considerable scope for cooperation with NGOs and other civil society organisations, which, if practice proves it necessary, may involve formal arrangements.
- (iii) review of funding. OPCAT requires that NPMs are provided with sufficient funding which may require that the issue of NPM budget is revisited so as to reflect the needs of the working body.

It may be useful to undertake such reviews before (or at) designation, as well as a year or so after designation to examine how it has worked in practice. Indeed, having a clause in the relevant NPM legislation which provides for a review to take place within a year or so of its beginning to operate may facilitate such discussions.

### **(b) Unpacking the notion of prevention:**

Many of the discussions throughout the event highlighted the very clear need to consider the concept of prevention and what this meant as regards:

(i) confidentiality. The issue of confidentiality and what this means in the context of an NPM's operations also needs further elaboration. The provisions of OPCAT do not impose such stringent confidentiality requirements upon the NPMs as compared to those imposed on the SPT. Thus, NPMs reports are public, for example, which is rather different from the reports of the SPT. With respect to the NPMs, therefore, confidentiality may be a useful tool in their work with authorities but at the same time NPMs can promote transparency in places of deprivation of liberty that they visit as well as in their own work.

(ii) the different strands of prevention: visiting, awareness raising and training, broader legislative and other considerations, pro-active engagement with state

parties and others, etc. Preventive visiting is the key route envisaged in the text of OPCAT, but on its own may not be sufficient to attain all the aims set out in OPCAT. Thus there is a need to take a broader view of prevention and approach it as multi-layered concept, which involves a range of activities.

(iii) how to balance a complaints-based approach with the notion of prevention. When unpacking the concept of prevention, two sets of actions emerge: direct prevention and indirect prevention. The former are described above (section ii) while the latter is comprised of dealing with complaints alleging ill-treatment. Undeniably this indirect prevention is an important component of the overall preventive work, however it may also pose a challenge for a body which is engaging in both direct and indirect preventive work, especially if such a body possesses quasi-judicial powers. Direct prevention may require at times confidential dialogue with authorities while indirect prevention, when a body discharges investigative functions and perhaps even issues binding requests to the very same authorities may make the direct prevention work difficult or even jeopardise it. There is a need for careful consideration of how these two approaches could work within the same organisation. Separating staff to deal with different functions and creating separate departments may be some ways of dealing with these tensions.

### ***(c ) Coordination among international and regional bodies***

The region is characterised by a web of active monitoring bodies that have accumulated considerable expertise in torture prevention. There is a need for coordination between these bodies so as to not to duplicate or contradict each other's work.

As between the SPT and CPT:

- (i) A need to engage in active discussions on how the two bodies will work together and address issues of timing and focus of visits; exchange of information; the issue of standards.
- (ii) a need to make the outcomes of such discussions known and clear to the states parties, the NPMs and other relevant stakeholders.

As between the SPT and other international bodies:

- (i) such as the ICRC and OSCE field missions: a need to engage in discussions as to how these bodies can work together in the region.
- (ii) For each international and regional body to discuss, in conjunction with the SPT, how they should approach the issue of NPMs so as to ensure consistency in approach.
- (iii) Consider how different visiting bodies can ensure a coordinated approach to visiting in terms of timing, methodology and recommendations

### ***(d ) The particularities of the ombudsperson office:***

Given that many states in the region had favoured or were considering the appointment of the ombudsperson office as the NPM, there was a need to consider a number of key points:

- (i) further discussion on how an institution which may be primarily complaints-led can adapt itself into one whose function has to be preventive. This could entail consideration of the creation of new

divisions within the ombudsman's office to undertake the NPM function, training on human rights for its staff and personnel, appointment of additional experts, as well as a broader consideration of what this meant for the overall ethos of the institution itself, etc.

- (ii) a need to consider the impact of designation in terms of additional resources that it would require
- (iii) whether the existing structure of the Ombudsman Office is suitable for the NPM mandate or whether the office itself needs to be restructured or supplemented with other bodies, like NGOs.
- (iv) that designation as an NPM generally did not mean 'business as usual' and that some changes were going to be necessary.

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- Tone Dolcic, Deputy Ombudsman, Republic of Slovenia
- Malcolm Evans, University of Bristol, United Kingdom
- Jens Faerkel Danish MFA, Denmark
- Tina Gewis, Human Rights Officer, OSCE Mission to Georgia, Georgia
- Filip Glotzman, Head of the Czech Ombudsman's Office, Czech Republic
- Yevgenniy Golosceapov, Director of AI Moldova, Moldova
- Zdenek Hajek, SPT, Czech Republic
- Antenor Hallo de Wolf, University of Bristol, United Kingdom
- Arthur Hovhannisyan, Head of Legal and Judicial Reforms Dep of MoJ, Armenia
- Musa Humbatov, Ministry of Justice, Head of the Penitentiary System Department, Azerbaijan
- Vanu Jereghi, Deputy Chairman of the Consultative Council (NGO leader), Moldova
- Lis Jespersen, RCT, Denmark
- Baktigul Kalambekova, Ministry of Foreign Affairs Kyrgyzstan
- Gulnara Kaliakbarova, PRI Regional Office, Kazakhstan
- Jan Kaminek, Human Rights & Transition Policy Department of the Ministry of Foreign Affairs of the Czech Republic, Czech Republic
- Tamar Kemularia, Adviser to The Public Defender, Georgia
- Renate Kicker, CPT, Austria
- Oleg Kozyrev, National Legal Officer, OSCE Centre Astana, Kazakhstan
- Andriy Kristenko, Mobile Monitoring Groups, Ukraine
- Kukka Kruger, Secretariat SPT, Finland
- Sergiy Kudruk, Head of Parliamentary Unit of the Secretariat of the Ombudsman, Ukraine
- Jaromir Kvapil, Head of the Prague Office of the OSCE, Czech Republic

- Saniya Ler, Rule of Law Officer, OSCE Centre Almaty, Kazakhstan
- AndresLehtmets, CPT, Estonia
- DebbieLong, University of Bristol, United Kingdom
- Dace Lukumiete, OSCE regional office, Moldova
- Rustam Makhmudyan, Criminal Executive Department, Ombudsman's Office, Armenia
- Jana Mareckova, League of Human Rights and Mental Disability Advocacy Centre, Czech Republic
- Maros Matiasko, League of Human Rights and Mental Disability Advocacy Centre, Czech Republic
- Anne McMillan, ODIHR, Poland
- Cristina Melnic, Legal adviser, Drafting normative acts' Division, Ministry of Justice, Moldova
- Anatolie Munteanu, Ombudsman, Moldova
- Mary Murphy, PRI-London, United Kingdom
- Rachel Murray, University of Bristol, United Kingdom
- Saadat Novruzova, Adviser, Human Rights Protection Unit, Administration of President of the Republic of Azerbaijan, Azerbaijan
- Audrey Olivier, APT, Switzerland
- Agnieszka Padewska, ODIHR, Poland
- Nele Parrest, Deputy Chancellor of Justice, Estonia
- Anton Petrenko, RCT, Denmark
- Silvia Pogolsha, OSCE Mission to Armenia, Armenia
- Matthew Pringle, APT, Switzerland
- Christine Reynolds, University of Bristol, United Kingdom
- Roman Romanov, International Renaissance Foundation, Ukraine
- Emma Rowstone, University of Bristol, United Kingdom
- Ludmilla Samoila, OSCE Mission to Moldova, Moldova
- Harald Scheu, Charles University of Prague, Czech Republic
- Ivan Selih, Office of Slovenian Ombudsman, Slovenia
- Oleg Semenenko, Senior Human Dimension Officer, OSCE Mission to Kyrgyzstan, Kyrgyzstan
- Stanislav Shevchuk, Head of the Rule of Law Unit of the OSCE Project Coordinator in Ukraine, Ukraine
- Ian Smith, ICVA, United Kingdom
- Elina Steinerte, University of Bristol, United Kingdom
- Elmira Suleymanova, Human Rights Commissioner (Ombudsperson), Azerbaijan
- Eric Svanidze, CPT, Georgia
- Tamar Tomashvili, Deputy Head of International Law Department, Ministry of Justice, Georgia
- George Tugushi CPT Georgia
- Zhemis Turmagambetova, Exec. Dir. of the Charter for Human Rights, Kazakhstan
- James Watson, University of Bristol, United Kingdom
- Carsten Weber, ODIHR, Poland
- Petra Zdrzilova Head of NPM Dept. Office of Public Defender of Rights Czech Republic
- Yevgenniy Zhovtis The Kazakh Bureau for Human Rights and the Rule of Law Kazakhstan

**'OPCAT in the OSCE region:  
What it means and how to make it work?'**

Conference organised by OSCE's Office for Democratic Institutions and Human Rights (ODIHR) and the Law School of the University of Bristol

25-26 November 2008  
Prague, Czech Republic

**Agenda**

**Tuesday, 25 November 2008**

8:30-9:00: arrival, registration, tea and coffee

**9:00- 9: 15: Opening by Dr Silvia Casale, Chairperson of the SPT**

**9:15- 10:30 Opening Plenary: Chair Prof Rachel Murray, University of Bristol**

**Speakers:**

**Dr Elina Steinerte**, University of Bristol

**Mr Carsten Weber**, ODIHR

**Mr Matthew Pringle**, APT

**10:30- 11:00 Coffee break**

**11:00- 12:30 II Plenary: Interplay between the SPT and CPT**

**Chair: Mr Antenor Hallo de Wolf, University of Bristol**

**Speakers:**

**Dr Silvia Casale**, SPT

**Dr Andres Lehmete**, CPT

**Mr Jens Færkel**, Danish Ministry of Foreign Affairs

**12:30- 14:00 Lunch break**

**14:00- 17:00 Breakout in Workshops** (with coffee break at 15:00-15:30)

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| <p><b>Workshop I:<br/><u>The Ombudsman Offices as NPM</u></b></p> <p><b>Chair of Day 1: <u>Ms Mary Murphy, PRI</u></b></p> | <p><b>Workshop II:<br/><u>The modalities of the NPM operation</u></b></p> <p><b>Chair of Day 1: <u>Mr Evghenii Golosceapov,</u><br/>Director of AI Moldova</b></p> |
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| <p>Aim here to discuss issues surrounding the selection of Ombudsman offices as NPM and what are the challenges here: the process of selecting an NPM: review of the existing bodies and mechanisms, what to look for (i.e, capacity, independence, experience, credibility etc), what is the driving force behind decision to appoint existing bodies or creating new ones.</p> <p>Speakers: (each to speak about 15- 20 minutes)</p> <p>Azerbaijan: <b><u>Mrs. Elmira Suleymanova</u></b>, Commissioner for Human Rights</p> <p>Czech Republic:<br/><b><u>Mr Filip Glotzmann and Mrs Petra Zdrzilova</u></b>, the Office of the Czech Ombudsman</p> <p>COFFEE BREAK at 15:00- 15:30</p> <p>Kazakhstan:<br/><b><u>Mr Yevgenniy Zhovtis</u></b> Kazakh Bureau for Human Rights and the Rule of Law</p> <p>Georgia:<br/><b><u>Mr Tamar Kemularia</u></b>, Adviser to the Public Defender and <b><u>Ms Tsira Chanturia</u></b> (PRI Regional Office)</p> | <p>Aim here to discuss the issues surrounding the practical aspects of NPM operation, like: visits to places of deprivation of liberty: how to ensure the regularity of these, how to ensure multi-disciplinary teams and how to ensure coverage both in terms of the geographical scope of the country and the variety of places of deprivation of liberty. Are there any differences in visiting places of deprivation of liberty etc.</p> <p>Speakers: (each to speak about 15- 20 minutes)</p> <p>United Kingdom:<br/><b><u>Mr Ian Smith</u></b></p> <p>Ukraine:<br/><b><u>Mr. Serhii Kudruk</u></b>, Head of Penitentiary Unit of the Secretariat of the Ombudsman<br/><b><u>Mr Andriy Kristenko</u></b>, Mobile Monitoring Groups</p> <p>COFFEE BREAK at 15:00- 15:30</p> <p>UK:<br/><b><u>Major R. Corcoran</u></b></p> <p>Estonia:<br/><b><u>Ms Mari Amos</u></b>, Office of the Chancellor of Justice, Estonia</p> <p>Denmark:<br/><b><u>Ms Louise Aaen</u></b>- RCT</p> |
| <p style="text-align: center;"><b><u>DAY TWO</u></b><br/><b><u>The Involvement of the NGOs in the work of the NPM</u></b></p> <p><b><u>Chair of Day 2: Prof Malcolm Evans, University of Bristol</u></b></p> <p>The involvement of NGOs in the work of the NPMs- The 'Ombudsman Plus' Model and other arrangements: why the involvement of the NGOs was deemed necessary, how the NGOs were selected, how is the actual work going and what are the challenges; the practicalities of the work: coordination, resources etc.</p> <p>Speakers: (each to speak about 15- 20 minutes)</p>   | <p style="text-align: center;"><b><u>DAY TWO</u></b><br/><b><u>The Concept of Prevention</u></b></p> <p><b><u>Chair of Day 2: Eric Svanidze (Georgia, CPT expert)</u></b></p> <p>What does the preventive mandate mean, how does it translate into the practical work of the NPM, what is the view on this of the SPT, operational NPMs, Ombudsmen offices and NGOs? Any common trends?</p> <p>Speakers: (each to speak about 15- 20 minutes)</p> <p><b><u>Mr Zdenek Hajek</u></b>, the SPT</p>   |

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| <p>Slovenia:<br/><b><u>Mr Ivan Selih</u></b>, Office of the Slovenian Ombudsman</p> <p>Moldova:<br/><b><u>Ms Cristina Melnic</u></b>, Legal Adviser, Ministry of Justice of Moldova; and<br/><b><u>Mr Vanu Jereghi</u></b>, Deputy Chairman of the Consultative Committee</p> <p>COFFEE BREAK at 10:30- 11:00</p> <p>Armenia:<br/><b><u>Mr Rustam Makhmudyan</u></b>, Criminal Executive Department, Ombudsman's Office and <b><u>Mr Arman Danielyan</u></b> Civil Society Initiative</p> | <p>Estonia:<br/><b><u>Ms Nele Parrest</u></b>, Office of the Chancellor of Justice, Estonia</p> <p>COFFEE BREAK at 10:30- 11:00</p> <p>Kyrgyzstan:<br/><b><u>Mr Moldakun Abdyldaev</u></b>, Head of staff at the Ombudsman's office</p> <p>Azerbaijan:<br/><b><u>Mrs Elmira Alakbarova</u></b>, Chair of Centre for the Programme Development 'El'</p> |
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**Wednesday, 26 November, 2008**

**9:00-12:00- Workshops continued** (with coffee break at 10:30-11:00)

12:00- 13:30- lunch break

**13:30- 15:00: Conclusion of the Conference**

**Chairs: Prof Malcolm Evans and Dr Elina Steinerte**, University of Bristol  
Reports from all the workshops by the chairs and concluding of the conference.