

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)/ Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)*

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The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was adopted in consensus by the UN General Assembly on December 10, 1984 and went into force on June 26, 1997. The first meeting of the UN Committee Against Torture (hereinafter called the Committee) was in April 1988. The Convention for Prevention of Torture under the Council of Europe was adopted in February 1989, and the first meeting of the Committee (CPT) took place in November 1989.

Article 11 in the CAT states that:

“Each state party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of per-

sons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture”.

Very early in their functioning the two committees realised that this Article was nearly never respected by the countries examined. If it had been, there would have been no need for OPCAT. Furthermore, the two committees understood that the inspection procedures done by CPT were very successful.

Consequently, a group consisting of members of the CAT Committee, the CPT, Amnesty International, and the International Committee of the Red Cross suggested that the old idea of an inspection procedure in connection with the CAT should be revived.

Authors' note: Upon writing the above for TORTURE (April 2007), the election as well as the first meeting of the Subcommittee have taken place. Some of the new elected members are present or former members of the CPT, in particular Sylvia Cassale (UK), who has been the president of the CPT and is now elected as president of the OPCAT. Consequently a smooth start of the Subcommittee can be anticipated.

*) Adapted version from panel discussions

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Further, Costa Rica suggested that an open-ended working group under the Human Rights Commission should be established. So it was, and for ten years the working group held an annual two-week meeting in Geneva with participation of interested states, Association de Prevention de Torture (APT) and CAT.

When the open-ended working group gave up reaching consensus, it was possible to create a draft protocol. Furthermore, at the very end of the work it was suggested and accepted that a national inspection mechanism should be established.

The OPCAT history is as follows:

- Workshop established in 1991
- 7 November 2002: UN General Assembly
 - 140 votes in favour
 - 8 votes against (China, Cuba, Israel, Japan, Nigeria, Vietnam, Syria and USA)
 - 37 abstentions

- 18 December 2002: UN General Assembly
 - Formal adoption
 - 127 votes in favour
 - 4 votes against (USA, Nigeria, Marshall Islands, Palau)
 - 42 abstentions

By June 22, 2006 the situation was as seen in Table 1.

Only states that have ratified UN CAT (at the moment 142) can ratify OPCAT.

OPCAT went into force on June 22, 2006 and the first election to the membership of the international committee was scheduled for December 18, 2006.

The subcommittee shall be:

- elected for four years
- consisting of 10 members
- [50 states – 25 members]
- able to serve in individual capacity
- independent
- impartial
- available

Table 1.

Western States incl. the former Eastern European States	Africa	Latin America & the Caribbean	Asia
Albania Armenia Croatia Czech Republic Denmark Georgia Liechtenstein Malta Poland Republic of Moldavia Serbia Spain Sweden Ukraine United Kingdom	Benin Liberia Mali Mauritius Senegal	Argentina Bolivia Costa Rica Honduras Mexico Paraguay Uruguay	Maldives
15	5	7	1

Signatories: 56, Parties: 28

The function of the Subcommittee is similar to the function of the CPT: Periodic or ad hoc visits to all places where persons are detained against their will by the individual state, and to write a confidential report which is sent to the state in question. Based on the facts found during the visit, the report asks questions and gives comments and recommendations to the state.

The composition of the national prevention mechanism is as follows:

State party shall establish

- Independent
- Preventive
- One or several national mechanisms
- Within one year (three years) after ratification

State party shall ensure

- Independence of the committee
- Professionalism of members
- Necessary resources

Tasks

- Regular visits to places of detentions
- Recommendations
- Annual report

Finally, the mandate for both the international subcommittee and the national is the following:

- Visits to all target places
- Talk in private with detainees and others
- See all premises
- See all papers
- Unannounced visits
- Repeated visits

(References from page 125)

1. The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Fact sheet no. 17.
2. Links to the official reports of the Committee Against Torture can be found at www.unhchr.vh
3. Report of the Committee Against Torture. General assembly. Official records: 60th session. Suppl. no. 44 (A/60/44). New York: United Nations, 2005.
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6. Report of the Committee Against Torture. General assembly. Official records: 44th session. Suppl. no. 46 (A/44/46). New York: United Nations, 1989.
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13. Report of the Committee Against Torture. General assembly. Official records: 59th session. Suppl. no. 44 (A/59/44). New York: United Nations, 2004.