



OPCAT Country Status Ratification and Implementation

29 June 2009

Introduction

The *Optional Protocol to the UN Convention against Torture* (OPCAT) establishes a system of regular visits to places of detention by independent expert bodies, in order to prevent torture and other forms of cruel, inhuman or degrading treatment or punishment. The OPCAT creates a new international body, the UN Subcommittee on Prevention, but also requires each State Party to have its own preventive body or “national preventive mechanism” (NPM).

The APT changed the name of its main resource on NPM processes and establishment in States Parties and Signatories to the OPCAT. The APT NPM Country-by-Country status report is now called OPCAT Country Status. The OPCAT Country Status will not only include information on ratification processes and national implementation (e.g NPMs) in States Parties and Signatories. It will also contain regularly updated information on States considering the signature, ratification or accession of the OPCAT. This document should thus be a more comprehensive resource on OPCAT development worldwide.

APT is currently working on a database, of the same information, to facilitate users search for particular data. This will be ready in 2009.

- Short **regional summaries** in the form of a table
- Detailed information **by country**, on a regional basis: Africa, Americas, Asia-Pacific, Europe & Central Asia, and Middle-East and North Africa.

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Part One - Summaries

Africa

	Signed	Ratified	NPM Status	
<u>Benin</u>	24.02.2005	20.09.2006		A draft law creating a new collegial institution is under consideration by an inter-ministerial committee. SPT visit in May 2008.
<u>Burkina Faso</u>	21.09.2005			National NGOs led by ACAT-Burkina have undertaken discussions on NPM but they are more focused on the ratification. A draft ratification bill is currently under consideration.
<u>Congo</u>	29.09.2008			Congo signed the OPCAT during the UN Treaty event in September 2008. The APT has no information on OPCAT ratification and/or NPM establishment.
<u>Gabon</u>	15.12.2004			The APT has no information on OPCAT ratification and/or NPM establishment.
<u>Guinea</u>	16.12.2005			The APT has no information on OPCAT ratification and/or NPM establishment
<u>Ghana</u>	06.11.2006			Ratification is under consideration by the Ministry of Justice and expected in 2009. Various NPM proposals are examined, including the designation of the Ghana Commission on Human Rights and Administrative Justice (CHRAJ).
<u>Liberia</u>		22.09.2004		The renewed independent national human rights commission could play the NPM role, with some adjustments to its mandate.
<u>Madagascar</u>	24.09.2003			OPCAT ratification: discussion on process. Ongoing process on the establishment of a National Human Rights Commission which could eventually be designated as NPM.
<u>Mali</u>	19.01.2004	12.05.2005	NPM designated (NHRC)	Presidential Decree established a National Human Rights Commission (NHRC) which entails that it will be also the NPM.
<u>Mauritius</u>		21.06.2005	NPM designated (NHCR)	The National Human Rights Commission (NHRC) was designated as the NPM. SPT first visit in October 2007.
<u>Senegal</u>	04.02.2003	18.10.2006	NPM designated (NEW)	In February 2009, the law creating the National Observer of Places of Deprivation of Liberty as NPM was adopted. Publication in the Official Gazette is pending.
<u>Sierra Leone</u>	26.09.2003			Some national NGOs are engaging dialogue to promote the ratification of the OPCAT. The recently created a National Human Rights Commission could play the NPM role.
<u>South Africa</u>	20.09.2006			Evaluation and discussions are ongoing. Process lead to the establishment of an Ad Hoc Committee to promote OPCAT ratification and NPM establishment.
<u>Togo</u>	15.09.2005			A draft law on OPCAT ratification was submitted to the Parliament in August 2008 and is currently under consideration by the Human Rights and Foreign Affairs Commissions of the Parliament

Shaded boxes: States Parties to the OPCAT

Unshaded boxes: States that have signed the OPCAT or are due to sign it in the near future

Part One - Summaries

Americas

	Signed	Ratified	NPM Status
Argentina	30.09.2003	15.11.2004	Three different NPM proposals are examined by the Congress at the federal level, while authorities of some provinces are drafting proposals for provincial preventive mechanisms.
Bolivia		23.05.2006	Following several plural meetings on NPM options, a draft law creating a new institution was submitted by an NGO to the Ministry of Justice, where it is currently under consideration.
Brazil	13.10.2003	12.01.07	The National Human Rights Secretariat is leading ongoing consultations on a draft law to establish a new committee as NPM.
Canada			Ratification is under consideration by the relevant Ministries.
Chile	06.09.2005	12.12.2008	Authorities suggest that the National Human Rights Institute (whose creation is under discussion by the Congress) could eventually play the role of NPM.
Costa Rica	04.02.2003	01.12.2005	NPM designated (Ombudsman) The Ombudsman (<i>Defensoría de los Habitantes</i>) was designated by decree in February 2007 as a temporary measure (pending a law) and an NPM Unit was created in early 2009 for this purpose.
Ecuador	24.05.2007		The ratification bill is under consideration by the Constitutional Tribunal. No information on NPM establishment.
Guatemala	25.09.2003	09.06.2008	A plural working group, established to lead the ratification campaign and discussions on implementation, has drafted a law to create a new commission as NPM.
Honduras	08.12.2004	23.05.2006	NPM designated (new body) The law creating the National Committee for the Prevention of Torture as NPM was adopted on 24 September 2008 by the Congress. The SPT will visit Honduras in 2009.
Mexico	23.09.2003	11.04.2005	NPM designated (NHRC) The government designated the National Human Rights Commission (CNDH) as NPM through an inter-ministerial agreement and an amendment to the CNDH statutes.
Nicaragua	14.03.2007	25.02.2009	NPM designation is under consideration with some indications that the Ombudsman Office (<i>Procuraduría para la Defensa de los Derechos Humanos</i>) is likely to play a role as NPM.
Paraguay	22.09.2004	02.12.2005	A law drafted by a plural working group to create a new committee as NPM has been under consideration by the Congress since June 2007. The SPT visited in March 2009.
Peru		14.09.2006	NPM proposals – including the National Human Rights NGO Networks' proposal to designate the Ombudsman (<i>Defensoría del Pueblo</i>) – have not yet been agreed by the Ministry of Justice.
Uruguay	12.01.2004	08.12.2005	NPM designated (new, NHRI) In December 2008, the Congress adopted the law to create a National Human Rights Institution , with a specific article designating this institution as the NPM.

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Part One - Summaries

Asia-Pacific

	Signed	Ratified	NPM Status	
Australia	19.05.2009			In December 2008, the Australian Human Rights Commission published a study on how to implement the OPCAT at the national level, recommending ratification for the second quarter of 2010.
Cambodia	14.09.2005	30.03.2007		Negotiations on the designation of the NPM are on-going and led by the Ministry of Interior. SPT visit in 2009.
Indonesia				In its National Human Rights Action Plan 2004-2009, the Government of Indonesia vowed to accede to the OPCAT in 2008. In January 2008, the Department of Foreign Affairs has asked the Institute for Policy Research and Advocacy (ELSAM) to assist in the draft of an academic paper on the implications of OPCAT ratification at the domestic level. Round-Table, November 2007
Korea (Republic of)				The Ministry of Justice is “favourably considering” accession to the OPCAT, but inter-ministerial consultations are still ongoing. National Human Rights Commission promotes ratification and states it is “confident” it has the “ability to serve” as NPM.
Maldives	14.09.2005	15.02.2006	NPM designated (HRCM)	The Human Rights Commission of the Maldives was officially designated as NPM in December 2007, and is currently reviewing its mandate and functions to function as NPM. SPT visit in December 2007 and report made public.
Philippines				In its pledge in support of its candidacy for the UN Human Rights Council, the Government of the Philippines has pledged to “strengthen domestic support for the ratification of the OPCAT”. In 2006, the Presidential Human Rights Committee adopted a resolution in favour of ratification. On 11 April, the chairman of the Presidential Human Rights Committee (PHRC), announced during the mandatory universal periodic review (UPR) that the Philippines will soon take formal steps to accede to the OPCAT (Press release). On 22 April 2008, the President ratified the OPCAT and recommended that the Senate concur with this ratification. The treaty underwent first reading at the Senate on 28, April. The Senate president has formally endorsed the OPCAT to the Committee on Foreign Affairs. A committee hearing will be calendared by the committee thereby inviting also members of civil society. Interpellation will be during the 2nd reading & formal adhesion on the 3rd. In its report to be examined by the CAT in May 2009, the Philippines informed to be “on the verge of ratifying the Optional Protocol to the Convention against Torture (OPCAT). The major line agencies and departments of the Executive Branch comprising the core members of the Presidential Human Rights Committee have all affixed their signatures to a Resolution: “Recommending the Accession and Concurrence to the Optional Protocol to the U.N. Convention Against Torture.”
New Zealand	23.09.2003	14.03.2007	NPM designated (multiple body)	Enabling legislation has been passed in December 2006 when the Crimes of Torture Act 1989 was added a section on prevention. The NZ Human Rights Commission was designated as the “central NPM” and is consequently responsible for coordinating the work carried out by the other components of the mechanism.
Timor-Leste	16.09.2005			The OPCAT has been submitted by the Ministry of Foreign Affairs and Cooperation to the Council of Ministers in late 2007 for its approval.

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Part One - Summaries

Europe and Central Asia

	Signed	Ratified	NPM Status	
Albania		01.10.2003	NPM designated (Ombudsman)	In April 2008, the People's Advocate (Parliamentary Ombudsman) was designated as the NPM.
Armenia		14.09.2006	NPM designated (Ombudsman)	The Human Rights Defender's Office was designated as NPM in April 2008.
Austria	25.09.2003			The Ministry of Foreign Affairs commissioned a background paper which calls for the creation of an entirely new monitoring mechanism. However, the consultation process is ongoing.
Azerbaijan	15.09.2005	28.01.2009	NPM designated (Ombudsman)	The Commissioner for Human Rights (Ombudsman) was designated as the NPM by presidential decree.
Belgium	24.10.2005			A large network of NGOs proposed the creation of a National Human Rights Commission, which would include a mandate to act as the NPM.
Bosnia and Herzegovina	07.12.2007	24.10.2008		No information regarding the NPM designation process.
Croatia	23.09.2003	25.04.2005		The Government may designate the Ombudsman as the NPM.
Cyprus	26.07.2004	29.04.2009		The Office of the Commissioner for Administration (Ombudsman) may be designated as the NPM.
Czech Republic	13.09.2004	10.07.2006	NPM designated (Ombudsman)	The Public Defender of Rights (Ombudsman) was designated as the NPM.
Denmark	26.06.2003	25.06.2004	NPM designated (Ombudsman)	The Parliamentary Commissioner for Civil and Military Administration (Ombudsman) was officially designated as the NPM.
Estonia	21.09.2004	18.12.2006	NPM designated (Ombudsman)	The Office of the Chancellor of Justice (Ombudsman) was designated as the NPM. SPT will engage with the NPM in 2009.
Finland	23.09.2003			The Ministry of Foreign Affairs established an inter-ministerial working group to examine NPM options. The Parliamentary Ombudsman is likely to be designated as the NPM.
France	16.09.2005	11.11.2008	NPM designated (NEW)	France designated the Contrôleur général des lieux de privation de liberté (General Inspector of Places of Deprivation of Liberty) as NPM, and the institution is functioning since July 2008.
Georgia		09.08.2005		Various NPMs proposals are under consideration, including a so-called 'Ombudsman plus' model.
Germany	20.09.2006	04.12.2008		Germany made a declaration under Article 24 at the time of the ratification, postponing for three years its obligation to designate its NPM. A weak option is being proposed, consisting of a Joint Commission of the Regions (4 persons) and a Federal Commissioner (1 person) with just 2 support staff.
Iceland	24.09.2003			Iceland is considering the ratification of the OPCAT in a near future, and possibly the creation of a new institution or committee to assume the NPM mandate.
Ireland	02.10.2007			The process of discussing the establishment of an NPM is in its formative stages.

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Italy	20.08.2003			The APT has no information regarding the OPCAT ratification and implementation process.
Kazakhstan	25.09.2007	22.10.2008		No decision has been made in Kazakhstan concerning the NPM
Kyrgyz Republic		29.12.2008		National consultations on the designation of the NPM are ongoing since 2007. A Working Group was created to promote the national implementation, and one proposal is the establishment of an "Ombudsman plus" option. Several national consultations will take place in 2009 to decide on the most appropriate NPM.
Liechtenstein	24.06.2005	03.11.2006	NPM designated (NEW)	The new Inspection Commission was appointed in March 2008 as the NPM.
Luxembourg	13.01.2005			A draft bill for the OPCAT ratification and designation of the NPM (Ombudsman) was presented to the Congress and is under consideration. The opinion from the Council of State (<i>Conseil d'Etat</i>) is pending.
FYR Macedonia	01.09.2006	13.02.2009	NPM designated (Ombudsman/ possibly Ombudsmen NGOs)	The Ombudsman of Macedonia was designated as the NPM, with possibly the participation of NGOs and humanitarian organisations registered in Macedonia. This participation will require the prior consent of the Ombudsman.
Malta	24.09.2003	24.09.2003	NPM designated	Two Boards were designated to assume the NPM mandate: the Board of Visitors for the Prisons and the Board of Visitors for Detained Persons (or Board of Visitors for Detained Migrants).
Republic of Moldova	16.09.2005	24.07.2006	NPM designated (three Ombudsmen + NGOs)	In August 2007, amendments to the Law on Parliamentary Advocates designated the National Center for Human Rights (Ombudsman's Office) to carry out the functions of the NPM in cooperation with civil society, including a Consultative Council of NGOs and independent experts.
Mongolia				An OPCAT Working Group was established to promote OPCAT ratification and implementation.
Montenegro	23.11.2006	06.03.2009		A July 2006 consultation identified the office of the Protector of Human Rights and Freedoms of the Republic of Montenegro (Ombudsman) as the likely NPM, but that additional financial and human resources were required. A follow-up meeting in November 2006 raised the issue of whether a complementary mechanism might be established for this purpose.
The Netherlands	03.06.2005			Existing monitoring mechanisms are being examined to determine whether they are in accordance with the OPCAT.
Norway	24.09.2003			No precise information is available about when the OPCAT will be ratified or about the establishment of the NPM.
Poland	05.04.2004	14.09.2005	NPM designated (Ombudsman)	The Commissioner for Civil Rights Protection (Ombudsman) has been designated as the NPM.
Portugal	15.02.2006			OPCAT ratification in process. No precise information about the establishment of the NPM.
Romania	24.09.2003			A draft law on ratification is under consideration by the Congress since 24 September 2008. The Ministry of Foreign Affairs is collecting information regarding the NPM processes in other countries.
Serbia	25.09.2003	26.09.2006		Protector of Citizens (Ombudsman) was recently created. No information is available about the establishment of the NPM.
Slovenia		23.01.2007	NPM	The Human Rights Ombudsperson in combination with

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			designated (Ombudsm and + NGOs)	NGOs were designated as the NPM.
Spain	13.04.2005	04.04.2006		In its 2009-2012 National Human Rights Plan, the government foresees that a draft NPM law will be introduced by June 2009, without indicating the NPM option. It is likely that the Ombudsman's Office would be designated as the NPM, through an amendment to its mandate, although this option has not reached any consensus amongst relevant civil society organizations at present date.
Sweden	26.06.2003	14.09.2005	NPM designated (Ombudsmen)	The Parliamentary Ombudsman and the Chancellor of Justice were designated as the NPMs through the ratification bill of the OPCAT, although both institutions did not want to assume the mandate. SPT visit to Sweden in March 2008 and report made public.
Switzerland	25.06.2004			Consultations ongoing based on the creation of a new Commission for the Prevention of Torture (<i>Commission de Prévention de la Torture</i>), which is a unified federal body with 12 members. Legislation is currently examined by the upper chamber of the Parliament, and is expected to be adopted by March 2009.
Turkey	14.09.2005			Civil society initiated a domestic discussion on implementation, albeit this process is still in its formative stages. The Ministry of Foreign Affairs is collecting information regarding NPM processes in European Union countries.
Ukraine	23.09.2005	10.09.2006		Ukraine's Parliamentary Commissioner for Human Rights might be designated as the NPM.
United Kingdom	26.06.2003	10.12.2003	18 oversight bodies, with coordination by HMIP	18 existing oversight bodies were designated as the UK NPM without changes to their mandates or powers. Her Majesty's Inspectorate for Prisons will assume the NPM coordination role for the 18 bodies.

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Part One - Summaries

Middle East & North Africa

	Signed	Ratified	NPM Status
<u>Lebanon</u>		22.12.2008	Two NPM options are currently being considered: creating a 'Committee for the Protection of the Rights of Detainees and Persons Deprived of their Liberty' or creating a National Human Rights Institution . The consultations on OPCAT implementation are ongoing.
<u>Morocco</u>			National seminar took place in February 2009, and various options are under consideration for the NPM, including creating a new institution, or designating the Consultative Human Rights Council as the NPM.
<u>Saudi Arabia</u>			On the occasion of the Universal Periodic Review of the Human Rights Council, Saudi Arabia committed to examine the possibility of ratifying the OPCAT.
<u>Tunisia</u>			Tunisia committed to ratify the OPCAT in the framework of the Universal Periodic Review of the Human Rights Council.
<u>Yemen</u>			Yemen's report was considered by the Universal Periodic Review of the Human Rights Council and Yemen committed to examine the recommendations on ratifying the OPCAT.

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OPCAT Country Status Africa

OPCAT Country Status - Africa

Benin

Ratification: 20 September 2006 - **NPM establishment:** due to have taken place before 29 September 2007

Updated on 13 February 2009

<p>Background information</p>	<p>Population: 7,862,944 Area (sq km): 112,620 Number of prisons: 8 Prison population: 5,834</p> <p>The police, under the Ministry of Interior, have primary responsibility for enforcing law and maintaining order in urban areas; the gendarmerie, under the Ministry of Defence, performs the same function in rural areas.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>African Commission on Human and People’s Rights examined Benin in May 2000.</p> <p>CAT examined Benin in November 2007 CAT Concluding observations</p> <p>SPT visited Benin from 18 to 26 May 2008 SPT press release. The visit report has not been made public at the day.</p> <p>Benin report was examined by the HRC in the framework of the UPR (May 2008) Report of the Working Group</p>
<p>NPM designation process</p>	<p>A few months after ratification, more exactly on 6 December 2006, the Government Cabinet reiterated the commitment of Benin towards OPCAT implementation, designating the Ministry of Justice as the leading agency for the establishment of the NPM.</p> <p>In July 2007, a consultative national seminar was jointly organized by the APT and the Ministry of Justice, and gathered 30 key national actors including representatives from various ministries and NGOs. This inclusive consultation reviewed the obligations and implications of the OPCAT and assessed the current national situation in Benin (current visiting mechanisms in place, gaps, needs...) and came up with a range of recommendations which served as a “roadmap” to guide the authorities in establishing an effective NPM.</p> <p>The seminar set up an Ad Hoc Working Group comprised of 9 people to follow up on the implementation of the seminar recommendations, to assist the Ministry of Justice to draft the NPM legislation. They are also tasked to advocate for the adoption of the legislation by Parliament and for the appointment of competent NPM members. Its first meeting was held in July 2007 under APT facilitation, in which the members discussed a preliminary draft of the NPM law.</p> <p>To date, the draft law has not been adopted, despite the recommendations of international bodies and the SPT visit to the country:</p> <ul style="list-style-type: none"> • In its concluding observations of November 2007, the CAT recommended to the Benin government to adopt a designation law for the NPM, as well as accelerate its process of establishment. The CAT also highlighted the need for open and permanent access to places of detention for the NGOs. • The APT was informed that the draft law is under examination by an inter-ministerial body which deals with issues related to legislation and codification. Once it will be approved by this body, it remains to be discussed and approved by the Parliament.
<p>NPM options</p>	<p>The roadmap adopted by the July 2007 seminar foresees the establishment, by law, of a new domestic body to serve as a NPM. To ensure the independence of the mechanism, it is recommended, among others, that the legislation on NPM should include:</p> <ul style="list-style-type: none"> • An appropriate procedure for the appointment of expert members • A powerful mandate for the NPM • An appropriate procedure for approval of budget and resources necessary for implementation <p>The draft law presented by the Working Group to the Ministry of Justice envisages the creation a new collegial body, the National Observatory for Prevention of Torture, comprised of 5 members, who would be selected through a public tender.</p>
<p>Legal framework</p>	<p><i>No NPM establishment law adopted yet</i></p>

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OPCAT Country Status - Africa

Burkina Faso

Signature: 21 September 2005 - **Ratification:** under consideration

Updated on 13 February 2008

Background information	<p>Country population: 13,902,972 Area (sq km): 274,200 Prison population: 2 800 Number of prisons: 11</p> <p><u>Consideration by international human rights mechanisms</u></p> <p>Burkina Faso report was examined by the HRC in the framework of the UPR in December 2008 Report of the Working Group</p>
OPCAT ratification and NPM designation processes	<p>A group of national NGOs led by ACAT- Burkina have undertaken discussions on NPM but they are more focused on the ratification. They initiated meetings with key authorities including the Parliament, the Ministry of Justice, Ministry of Interior, Ministry of Foreign Affairs and Ministry of Human Rights in order to advocate for the ratification of the OPCAT.</p> <p>National NGOs expect Burkina Faso to ratify in a near future, and the APT was informed that an OPCAT law is under consideration by the relevant ministries. In addition, the government intentions to ratify the OPCAT were made public during the UPR in December 2008, as it indicated that <i>“measures will be soon taken to ratify the OPCAT”</i>. However, the APT took the opportunity of its presence in Burkina Faso in December 2008 to hold bilateral meetings with interested stakeholders. Despite the factors mentioned above, it seems unlikely that OPCAT ratification take place in the coming year.</p>
NPM options	<p>As Burkina Faso is currently focusing on ratification, no NPM option is under consideration, as far as the APT is aware.</p>
Legal framework	<p><i>No NPM establishment law adopted yet</i></p>

OPCAT Country Status - Africa

Gabon

Signature: 15 December 2004 - **Ratification:** under consideration

Updated on 03 December 2008

Background information	<p>Population: 1,424,906 Area (sq km): 267,667 Prison population: 2,750</p> <p><u>Consideration by international human rights mechanisms</u></p> <p>HRC considered Gabon in October 2000 HRC Concluding observations</p> <p>Gabon report was considered during the HRC in the framework of the UPR in May 2008 Report of the Working Group</p>
OPCAT ratification and NPM designation processes	<p>During the 41st session of the African Commission on Human and Peoples' Rights, held in Ghana in May 2007, the APT met with the Vice-Prime Minister of the Republic of Gabon and the Deputy Secretary General of the National Human Rights Commission. Both authorities expressed an interest in OPCAT ratification and implementation.</p>
NPM options	<p>Gabon is currently focusing its attention on the OPCAT ratification and no NPM option is currently under consideration, as far as the APT is aware.</p>
Legal framework	<p><i>No NPM establishment law adopted yet</i></p>

OPCAT Country Status - Africa

Ghana

Signature: 06 November 2006 - Ratification: under consideration

Updated on 17 February 2009

<p>Background information</p>	<p>Population: 22 409 572 Area (sq km): 239 460 Prison population: 12 736 Number of prisons: 47</p> <p>John KUFUOR, who defeated former Vice President John ATTA-MILLS in a free and fair election, succeeded him. In 2002, it was established a National Reconciliation Commission (NRC) with the task to compile a record of human rights violations committed during Ghana's periods of unconstitutional rule since independence in 1957, and to recommend reparations and reforms.</p> <p>Consideration by international and regional human rights mechanisms</p> <p>African Commission on Human and People's Rights considered Ghana in April 2001</p> <p>The Ghana report was considered by the HRC during the UPR in May 2008 Report of the Working Group</p>
<p>OPCAT ratification and NPM designation processes</p>	<p>In June 2006, the Commission on Human Rights and Administrative Justice (CHRAJ) in collaboration with the APT held a roundtable conference on the ratification and implementation of the OPCAT. The conference provided for the first formal forum on the OPCAT in Ghana and gathered government officials, civil society organizations and Ghana Prisons and Police services. Since this roundtable, the CHRAJ has followed up on the perspective for Ghana towards ratification. Consequently, Ghana signed the OPCAT six months after the national roundtable.</p> <p>In 2007, the CHRAJ organized some bilateral meetings with key officials from the Ministry of Foreign Affairs and Attorney General's Office to promote a prompt OPCAT ratification. In the framework of the UN Day in Support of Victims of Torture (26 June 2007), the CHRAJ organized a second national roundtable on OPCAT, with the participation of most of the relevant stakeholders, apart from the Attorney General's representatives. At the end of the national consultation, a press statement urging the government to ratify the OPCAT and to improve the conditions of detention in the prison, was published and disseminated.</p> <p>Ghana's report was examined by the Universal Periodic Review of the Human Rights Council in March 2008, and on this occasion, the then Minister of State at the Ministry of Justice, Mr Ambrose Dery, informed that "<i>steps are underway to ratify the Optional Protocol to the Convention against Torture</i>". In addition, the Ministry of Justice committed on that occasion to ratify the international instrument in 2008.</p> <p>In April 2008, the CHRAJ followed-up on the government's commitment and organized a third consultative workshop to initiate the discussions on the most appropriate NPM options for Ghana. The workshop reached a high level of participation from the authorities and civil society organisations, as well as the media. The OPCAT workshop ended with the recommendation to create a Working Committee to discuss an Action Plan for the ratification and implementation of the OPCAT. The initial institutions which were represented in the Working Committee included the Ghana Bar Association, Ghana Journalist Association, Centre for Democratic Development, Amnesty International and the Legal Section of the Ministry of Foreign Affairs. Being an election year in Ghana, the first meetings of the Working Committee were not able to gather all its members and to propose some recommendations towards OPCAT ratification and implementation.</p> <p>Following the third workshop on OPCAT, and considering the difficulties of the Working Group, AI-Ghana decided to join the CHRAJ in its efforts to promote OPCAT ratification and implementation. The CHRAJ and AI-Ghana took the opportunity of the UN Day in Support of Victims of Torture (26 June 2008) to present a petition and signature collection of high-profiled personalities urging the government to ratify the OPCAT. The CHRAJ decided to focus its efforts to lobby the newly appointed government to ratify the OPCAT before June 2009. The CHRAJ expressed publicly its intention to support the functioning of the Working Committee in order to enable the members to present their recommendations by June 2009.</p> <p>As far as the APT is aware, a memo for the OPCAT ratification was ready and should be examined by the Government Cabinet before its submission to the Parliament for approval.</p>
<p>NPM options</p>	<p>The Working Committee established after the April 2008 seminar is entitled to undertake a factual inventory of national bodies which conduct visits to places of detention. The Working Committee members would have to consider a wide range of issues, including: the scope of jurisdiction, number of members and staff, functional independence, office locations, budget and working methods etc. The organisations that are taken into account include the CHRAJ, AI-Ghana (which organizes reactive visits) and Ghana Prisons Fellowship (which organizes humanitarian visits). On</p>

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OPCAT Country Status - Africa

Ghana

Signature: 06 November 2006 - Ratification: under consideration

Updated on 17 February 2009

the basis of the inventory, the Working Committee might be in condition to draw some recommendations on the most appropriate NPM options, either multiple NPMs or the CHRAJ.

Since 1995, the CHRAJ conducts visits to places of detention through an extensive interpretation of their “promotion” mandate. Hence they do not have any legal mandate to conduct preventive visits in the sense of the OPCAT. The CHRAJ is not provided with any legal mandate to have total access to registers, information, facilities and detainees, but they do have in practice. In the past years, the CHRAJ focused its visits to police stations, prisons, centres for minors, refugee camps and psychiatric institutions. They do not visit immigration facilities nor military detention facilities due to resource constraints, a not because of a lack of access. Most of its visits are notified in advance.

In the case the CHRAJ would be designated as the NPM, some adjustments to its mandate would be required in order to be compliant with the OPCAT, more particularly on the financial independence and on the legal mandate. The CHRAJ claims to have independent specialized mechanisms for carrying out preventive visits to places of detention, and demonstrated long-established records of independence, as well as credibility from the local and international public.

Other options to be considered by the Working Committee would be the designation of AI and Ghana Prisons Fellowship, with the CHRAJ acting as a Central National Preventive Mechanism, similarly to the New Zealand NPM option.

Legal framework

No NPM establishment law adopted yet

OPCAT Country Status - Africa

Liberia

Ratification: 22 September 2004 - **NPM establishment:** due to have taken place before 22 June 2007

Updated on 14 April 2008

<p>Background information</p>	<p>Population: 3,042,004 Area (sq km): 111,370 Prison population: 880 Number of prisons: 12</p> <p>In 2003, a peace agreement ended 14 years of civil war and prompted the resignation of former president Charles Taylor. Democratic elections in 2005 brought President Ellen Johnson-Sirleaf to power. The Ministry of Justice has responsibility for enforcing law and maintaining order within the country and oversees the LNP and the National Bureau of Investigation (NBI). Approximately 15 thousand UNMIL peacekeepers and 1,100 CIVPOL officers had primary responsibility for maintaining security while the Liberia National Police (LNP) and the Armed Forces of Liberia (AFL), which was under the Defence Ministry, were being retired and retrained during the year. Conditions in the majority of prisons and detention centres remain well below minimum standards.</p> <p>The report of the Human Rights Situation in Liberia delivered by UNMIL (May to October 2007) informed about the existence of unauthorised detention facilities. The use of unofficial or private detention is a main challenge in Liberia. For instance, some Courts visited in May 2007 (Gbartala Magistrates' Court, Bong County) and it was found that the court was running an unauthorised detention facility. Several such facilities are also said to exist in many counties.</p>
<p>NPM designation process</p>	<p>Local NGOs, such as PAP (Prisoners Assistance Programme) have been lobbying for the adoption of a legislative enactment to make torture a crime, which was intending to incorporate the set up of an NPM. They met with legislators and other key stakeholders in the framework of their campaign for the OPCAT implementation.</p>
<p>NPM options</p>	<p>An independent national commission on human rights (INCHR) was created as one of the goal of the Comprehensive Peace Agreement. This INCHR is responsible for promoting national implementation of international and regional human rights treaties signed by Liberia. The Commission had also the mandate to make recommendations to the Government on remedial actions that are required in individual cases or systematic reforms required where the violations are of a widespread nature. Nevertheless, as of April 2008, the INCHR Commissioners have not been re-appointed, even if the staff and Secretariat are still being paid to fulfil with their functions. The APT has been informed that the INCHR act is being repealed in order to take out the judicial powers inscribed in its initial mandate. To that end, a civil society committee comprised of various NGOs, including the PAP, ARC and National Human Rights Centre intends to benefit from this initiative to include the NPM function in the renewed INCHR.</p>
<p>Legal framework</p>	<p>INCHR act <i>No NPM establishment law adopted yet</i></p>

OPCAT Country Status - Africa

Madagascar

Signature: 24 September 2003 - **Ratification:** under consideration

Updated on 14 April 2008

Background information	<p>Population: 18,595,469 Area (sq km): 587,040 Prison population: 20 294 Number of prisons: 99</p> <p>The minister for public security heads the national police and is responsible for law and order in urban areas. The <i>Gendarmerie Nationale</i>, overseen by the Ministry of National Defence, is responsible for security in all other areas of the island.</p>
OPCAT ratification and NPM designation processes	<p>On the occasion of a seminar organized by the Ministry of Justice, ACAT-Madagascar and the APT on the implementation of the UNCAT (January 2007), possible actions regarding OPCAT ratification were discussed. As a result, the plan of action adopted at the end of the seminar aimed at guiding the Ministry of Justice in the adoption of legal reforms and other preventive measures, including OPCAT ratification an implementation. However, priority is given to the due implementation of the UNCAT obligations.</p>
NPM options	<p>Discussions to establish a national human rights commission is undergoing and the new created institution could eventually play the role of an NPM.</p>
Legal framework	<p><i>No NPM establishment law adopted yet.</i></p>

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Mali

Ratification: 12 May 2005 - **NPM DESIGNATED (NATIONAL HUMAN RIGHTS COMMISSION)**

Updated on 03 December 2008

<p>Background information</p>	<p>Population: 11,716,829 Area (sq km): 1 240 000 Prison population: 4407 Number of prisons: 58</p> <p>Security forces are composed of the army, air force, gendarmerie, national guard, and police. The army and air force are under the control of the civilian minister of defence. The National Guard is administratively under the minister of defence; however, it is effectively under the command and control of the minister of internal security and civil protection. The police and gendarmerie are under the ministry of internal security and civil protection. The police and gendarmes shared responsibility for law enforcement and maintenance of order; the police were in charge of urban areas only. The national police force is organized into various divisions. Each district has a commissioner who reported to the regional director at national headquarters.</p> <p><u>Consideration by international human rights mechanisms</u></p> <p>Mali report was considered by the HRC in the framework of the UPR in May 2008 Report of the Working group</p>
<p>NPM designation process</p>	<p>After the creation of the National Human Rights Commission (NHRC) which is due to function as the NPM (see “NPM options” below), the Chairperson of the Mali NHRC requested APT assistance to strengthen the functioning of the NHRC as a NPM. Therefore, in March 2007 the APT organized jointly with the NHRC a workshop on the OPCAT with the following objectives:</p> <ul style="list-style-type: none"> • Familiarizing NHRC members with OPCAT obligations and implications • Better understanding of the role of the NHRC as a NPM • Identifying needs and priorities for the NHRC to fulfil their mandate as a NPM • Drawing up a plan of action for an effective functioning of the NHRC as a NPM <p>The workshop reviewed current structure and functioning of the NHRC, identified needs and developed a plan of action to ensure the good functioning of the NCHR as a NPM. This “roadmap” provides with concrete steps/measures to be taken to improve the structure of the NHRC, its functioning in terms of monitoring places of detention and its cooperation with other actors including the international Sub-commission for Prevention of Torture (SPT). The “roadmap” contains also a provision stating that the APT and the NCHR should consider areas in which the APT could assist the NCHR to fulfil its NPM mandate. Therefore, on 24 May 2007, the APT wrote a letter to the Chairperson of the NHRC with concrete suggestions on follow-up steps to implement the roadmap including a possible training on monitoring places of detention for members of the NCHR Sub-commission on prevention of torture (Sub-commission), which is dedicated to play the NPM role within the NHRC. Depending on the NHRC’s response to APT proposals, the APT would also facilitate contact and dialogue between the NHRC and the SPT in order for the latter to assist and advise the NHRC.</p> <p>However, the APT is not aware of any concrete actions that have been taken since that date.</p>
<p>NPM options</p>	<p>In March 2006 a Presidential Decree established a National Human Rights Commission (NHRC), and the Decree implies it would also be the NPM. However, the proposed Commission falls short of OPCAT requirements in many respects:</p> <ul style="list-style-type: none"> • More than a quarter of the membership of the Commission would be representatives of various Ministries of government. • For the majority of members, there is no requirement that the individual have expertise relevant to visiting or assessing places of detention. • None of the guarantees and powers in respect of visits required by the OPCAT are expressly provided for, such as right of access to places of detention, right of private interviews with detainees, or protection from retribution for those who cooperate with the Commission. • Rather than enshrining the process of constructive dialogue between authorities (at both the local and national level) and the NPM on implementation of specific recommendations, the Decree simply contemplates that the Commission would inform the government about the conditions of detention of detainees (in French language original: “<i>informer régulièrement le gouvernement sur la situation carcérale des détenus.</i>”)
<p>Legal framework</p>	<p><i>No specific NPM law has been adopted.</i> The only legal framework available is the Presidential NHRC decree.</p>

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MauritiusRatification: 21 June 2005 - **NPM DESIGNATED (NATIONAL HUMAN RIGHTS COMMISSION)**

Updated on 04 December 2008

Background information	<p>Population: 1,240,827 Area (sq km): 2040 Prison population: 2464 Number of prisons: 9</p> <p>The Mauritius Police Force is a national force headed by a commissioner of police who has authority over all security and police forces, including the Special Mobile Forces, a paramilitary unit that shares responsibility with police for internal security. The National Human Rights Commission (NHRC) investigates allegations of police abuses and may report such cases to the Director of Public Prosecutions (DPP).</p> <p><u>Consideration by international human rights mechanisms</u></p> <p>Mauritius received the first visit of the SPT in October 2007: (SPT press release). The SPT submitted its visit report in July 2008, and a high-level Committee is looking into the implementation of the findings, observations and recommendations in the report.</p> <p>CAT considered Mauritius in 1999 CAT Concluding observations</p> <p>Mauritius report was considered by the HRC in the framework of the UPR in February 2009 National report</p>
NPM designation process	The Mauritius National Human Rights Commission assisted the APT to promote ratification.
NPM designated	In its report examined by the UPR in February 2009, Mauritius informed that the National Human Rights Commission (NHRC) has been designated administratively as the NPM and they are currently revising their mandate to amend their legislation to be OPCAT compliant. The NHCR has a clear investigate mandate, but is enabled to “ <i>visit any police station, prison or other place of detention under the control of the State to study the living conditions of the inmates and the treatment afforded to them</i> ”. However, some amendments would be required to comply with the NPM criteria enshrined in the OPCAT.
NPM functioning	<p><u>Structural organisation</u></p> <p>A “temporary” NPM was created under the aegis of the NHRC. The NHRC is also looking at the New Zealand NPM to involve other institutions in the NPM.</p> <p><u>Composition</u></p> <p>The NHRC started operating in April 2001 and is composed of a Chairman and three other members. The law states that the Chairman and other members shall be appointed by the President, acting on the advice of the Prime Minister, on such terms and conditions as he thinks fit. Thus the current NPM is composed of 8 individuals: 2 members from the HRC (one being Deputy Chair of the NHRC and also chairing the NPM); 2 members from the Attorney General's Office, 1 member from the Ombudsman's Office; the Chief Police Medical Officer; and 2 members from the NGOs.</p> <p><u>Financial</u></p> <p>The budget of the NHRC is voted by the Parliament, under the proposal of the government and the same NHRC recognizes lacking of financial independence.</p> <p><u>Monitoring places of detention</u></p> <p>The NPM conducted its first visit to a prison on 7 March 2008, and we have been informed that the report on this visit is being prepared. The second visit was postponed due to massive floods in the country and has not yet been rescheduled.</p> <p><u>Other relevant issues</u></p> <p>The NPM first met during the SPT's visit and since then has had some 4 meetings.</p>
Legal framework	<p>NHRC law</p> <p><i>NPM draft law under consideration by the Ministry of Justice</i></p>

Senegal

Ratification: 18 October 2006 - **NPM DESIGNATED: NATIONAL OBSERVER OF PLACES OF DEPRIVATION OF LIBERTY**

Updated on 01 April 2009

Background information	<p>Population: 11,987,121 Area (sq km): 196 190 Prison population: 5360 Number of prisons: 38</p> <p>Police and gendarmes are responsible for maintaining law and order in the country. The army shares that responsibility in exceptional cases, such as when a state of emergency is announced. The police force contains 10 departments as part of the Directorate General of National Safety. In each of the country's 11 regions, police have at least one police station and at least one mobile safety brigade. Dakar has more than 15 police stations, which are spread throughout the city.</p> <p><u>Consideration by international human rights mechanisms</u></p> <p>Senegal report was examined considered by the HRC in the framework of the UPR in February 2009 National report</p>
NPM designation processes	<p>In January 2006 the APT jointly with Amnesty International - Senegal organised a roundtable to promote a prompt OPCAT ratification and a sound implementation. As a result of the roundtable, a national coalition for the ratification and implementation of the OPCAT was set up, and is led by AI-Senegal. The joint efforts of the national coalition and its international partners resulted in the ratification of the OPCAT by Senegal on 18 October 2006.</p> <p>The national coalition continues its activities focusing on the national implementation of the OPCAT, more particularly on the establishment of the NPM. In that context, the coalition mandated an expert to conduct an inventory of national monitoring bodies in the light of the OPCAT criteria. This inventory served as a basis for discussions on the most appropriate Senegalese NPM. In addition, the document recommends two main options for Senegal: designating an existing body (the Senegalese Human Rights Commission) or creating a new institution.</p> <p>The recommended NPM options were discussed during a national consultation co-organized by the coalition and the APT in December 2007. After having examined the advantages and challenges of each option, the participants agreed upon the creation of a new institution, which should be established by law. In addition, the participants of the national consultation adopted a "road map" at the end of the seminar which determines the follow-up actions towards the designation of the NPM. Finally, similarly to the creation of a national coalition after the first seminar, a follow-up committee was established in December 2007, and is comprised of representatives from the Ministries of Justice, Interior, Armed Forces, representatives from four different NGOs and the Senegalese Human Rights Commission.</p> <p>The follow-up committee is committed to :</p> <ul style="list-style-type: none"> - present officially to the Ministry of Justice the recommendations of the seminar; - support the Ministry of Justice in the elaboration and drafting of the NPM law proposal; - advocate for the prompt adoption of the law by the Parliament - advocate for the appointment of a competent person to assume the direction of the new institution. <p>The follow-up committee studied various options for creating a new institution as NPM, and examined more particularly the French General Inspector of Places of Deprivation of Liberty. They decided to promote the establishment of a similar institution in Senegal as NPM. In April 2008, the follow-up committee offered its assistance to the new Minister of Justice, who ensured the members that they would be closely associated with the drafting of the NPM law.</p> <p>In July 2008, some civil society organizations presented a draft NPM proposal to the Presidency based on the discussions held during the national forum in December 2007, and on the conclusions of the follow-up committee. This draft proposal was approved by the Council of Ministers on 20 November 2008, and was presented to the Parliament for discussions and approval.</p> <p>In January 2009, the APT conducted an advocacy visit to Senegal to promote the prompt adoption of the NPM law. The APT took the opportunity to meet with relevant civil society organisations, including AI-Senegal, and with parliamentarians to discuss the establishment of the NPM. Few days after the APT visit, the National Assembly approved the draft NPM law, with some amendments. On 19 February 2009, the APT was informed that the law was adopted by the Senate, creating a new NPM: the National Observer of Places of Deprivation of Liberty.</p>

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Senegal

Ratification: 18 October 2006 - **NPM DESIGNATED: NATIONAL OBSERVER OF PLACES OF DEPRIVATION OF LIBERTY**

Updated on 01 April 2009

NPM options	<p><u>Existing monitoring mechanisms</u></p> <p>Local organisations visit prisons for different purposes. It is reported that the National Organization for Human Rights (ONDH), local human rights NGO, identified overcrowding as the major problem facing the country's prisons. The Senegalese Committee for Human Rights, the Parliamentarian Network for Human Rights, and a group of Catholic priests area also reported to visit prisons.</p> <p><u>NPM option</u></p> <p>The NPM proposal presented in July 2008 by the civil society organisations was initially providing for the creation of a new institution, the General Inspector of Places of Deprivation of Liberty (<i>Contrôleur général des lieux de privations de liberté</i>). The draft proposal was <i>mainly</i> inspired by the French NPM law.</p> <p>The APT submitted some comments and suggestions in relation to the establishment of the General Inspector in Senegal. Please refer to France for further information on the Inspector, and to the APT comments on the French NPM law.</p> <p>The law adopted in February 2009 provides for the creation of a National Observer of Places of Deprivation of Liberty, which is very similar to the French General Inspector. On the basis of proposed amendments made by AI-Senegal and the APT in January 2009, the National Assembly decided to amend the National Observatory's law in the sense of the OPCAT. The main changes introduced by the parliamentarians restricted the possibility to report a visit of the NPM, and the NPM can be granted access to the relevant information. The implementing decree is now pending for adoption.</p> <p>However, AI-Senegal and the APT expressed some concerns regarding the financial autonomy of the future institution.</p>
SPT communications	<p>Official correspondence to the SPT designating the NPM</p>
Legal framework	<p><i>NPM law adopted n° 2009-13 of 2 March 2009</i></p>

OPCAT Country Status - Africa

Sierra Leone

Signature: 26 September 2003- **Ratification:** under consideration

Updated on 19 February 2009

<p>Background information</p>	<p>Population: 5, 7 millions Area (sq km): 71 740 Prison population: 1,899 Number of prisons: 18 (2 under construction)</p> <p>The government is slowly re-establishing its authority after the 1991 to 2002 civil war that resulted in tens of thousands of deaths and the displacement of more than 2 million people (about one-third of the population). The last UN peacekeepers withdrew in December 2005, leaving full responsibility for security with domestic forces, but a civilian UN office remains to support the government.</p> <p>The Sierra Leone Police has primary responsibility for maintaining internal order, and has approximately 9,300 officers (end of 2005).</p>
<p>OPCAT ratification and NPM designation processes</p>	<p>In April 2008, the APT met with several representatives of the civil society and National Human Rights Commission from Sierra Leone during the OPCAT regional conference organized by Bristol University in South Africa. On that occasion, the APT was informed that several organisations, including Forum of Conscience and Prisons Watch, are conducting visits to places of detention. The visits take place with different purposes, such as legal counselling and assistance, monitoring of the length of pre-trial detention etc.</p> <p>On the other hand, the National Human Rights Commission (NHRC) 's mandate also provide for the "access to all government offices, facilities and places of detention, including prisons, police cells, remand homes and probation facilities, in order to investigate a human rights matter initiated by the Commission or brought to the attention of the Commission as well as access to any non-classified information in government documents" (NHRC law).</p> <p>The Truth and Reconciliation Commission (TRC) Act 2000 included a provision encouraging the government to establish a NHRC that would implement the TRC recommendations. The NHCR entered into functions in 2007 and presented its first annual report to the Parliament and the President in July 2008. According to the NHRC, there is no system in place of effective monitoring of places of detention in Sierra Leone, even if the NHRC carried out its first preliminary survey of prisons in 2007-2008.</p>
<p>NPM options</p>	<p>The APT is not aware of any discussion on potential NPM options. The NHCR could be an institution that might eventually assume the NPM mandate.</p>
<p>Legal framework</p>	<p><i>No NPM establishment law adopted yet</i></p>

South Africa**Signature:** 20 September 2006 - **Ratification:** under consideration

Updated on 19 February 2009

Background information	<p>Population: 44,187,637 Area (sq km): 1,219,912 Prison population: 157 402 Number of prisons: 240</p> <p>On 15 December 2005 the Jali Commission of Inquiry handed its report to the President after a four-year inquiry into corruption and violence in prisons; and the report has been made public in November 2006.</p> <p>The UN Working Group on Arbitrary Detention visited the country in September 2005 and expressed alarm at the “rate of overcrowding in detention facilities”. The overcrowding, in some cases by over 300 per cent of capacity, and the resulting poor prison conditions led the Judicial Inspectorate of Prisons to recommend that minimum sentence legislation be allowed to lapse. The UN delegates noted, in respect of prisoners awaiting trial or sentence, a “lack of adequate facilities so blatant that they fall short of international guarantees”. The Civil Society Prison Reform Initiative urged Parliament in November to support the development of rehabilitation programmes and non-custodial alternatives to imprisonment.</p> <p>The South African Police Service (SAPS), under the Department of Safety and Security, has primary responsibility for internal security. The SANDF, under the Department of Defence, is responsible for external security but also has domestic security responsibilities. The National Prosecuting Authority's (NPA) Directorate of Special Operations, the "Scorpions," coordinates efforts against organized crime and corruption.</p> <p><u>Consideration by international human rights mechanisms</u></p> <p>CAT examined South Africa's report in 2006 CAT Concluding observations</p> <p>South Africa report was examined by the HRC in the framework of the UPR in April 2008 Report of the Working Group</p>
OPCAT ratification and NPM designation processes	<p>The APT conducted an advocacy mission to South Africa in November 2005 to promote a prompt OPCAT ratification. From the meetings held with Police officials, public officials as well as civil society actors, it appeared that a revised Judicial Inspectorate of Prisons with increased resources would be the most relevant existing mechanism to take on a future NPM mandate.</p> <p>In April 2006, few months after the APT visit the APT and the South African Human Rights Commission (SAHRC) decided to take benefit of the momentum for ratification and organized a roundtable discussion on the OPCAT. The participants to the roundtable commended to the SAHRC an inventory of existing monitoring mechanisms in South Africa. This document would serve as a basis for future national discussions on OPCAT implementation. The inventory was therefore carried out in cooperation with the Centre for the Study of Violence and Reconciliation (CSVR), and was published in December 2008 Review of existing mechanisms</p> <p>The report provided an overview and analysis of existing systems for the prevention and investigation of torture in South Africa. It also made recommendations on the setting up, designation or maintaining of a national preventive mechanism, as required by Article 3 of OPCAT. Following up on the report the SAHRC and CSVR convened a workshop in order to engage a critical debate on the preliminary findings and recommendations of the report and consider how to use the report as a source of ideas for future implementation of the OPCAT. The APT was invited to this workshop which took place in February 2007 at the SAHRC offices in Johannesburg.</p> <p>The Workshop concluded with the establishment of a Section 5 Committee (Ad Hoc Committee) under the legislative framework of the SAHRC. The Section 5 Committee is mandated to promote the domestication of the CAT as well as OPCAT ratification and implementation, including the facilitation of the establishment of the South African NPM. The APT is part of the Committee and provides technical advice on strategies and activities to promote OPCAT ratification.</p> <p>To date, the APT participated in two meetings of the Section 5 Committee in November 2007 and December 2008. The Committee members examined on those occasions the domestication of the UNCAT provisions, advocate for ratification of the OPCAT and promote its implementation by facilitating the establishment of a NPM in South Africa. In addition, the regional OPCAT Conference organised in April 2008 by the OPCAT Project of Bristol University in South Africa provides for bilateral meetings with the SAHRC to follow-up on specific activities.</p> <p>Ratification of the OPCAT is still pending and may not take place before 2010. In its report to the UPR in May 2008, South Africa stated to be in “<i>process of signing and ratifying the OPCAT</i>”.</p>

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South Africa

Signature: 20 September 2006 - Ratification: under consideration

Updated on 19 February 2009

<p>NPM options</p>	<p><u>Existing monitoring bodies</u></p> <p>The Judicial Inspectorate of Prisons (JIP) was established in 1997 and its purpose is to facilitate inspections to the existing 240 prisons to ensure human treatment of prisoners. The JIP comprises two branches: the Office (prisons inspectorate comprises inspectors and other staff), and Independent Prisons Visitors (individual complaints process). The JIP has been through an important review of its work and mandate, including the creation of visitor committees for each individual prison with full-time coordinators. In addition, the Inspecting Judge has reportedly made unannounced visits to prisons, and visits are carried out between 1 and 4 times per month. However, according to the Review of Existing Mechanisms report published by CSV, the JIP lacks of administrative and budgetary independence from the executive, more particularly regarding the appointment procedure. His mandate also focuses on recording prisoner complaints.</p> <p>The South African Human Rights Commission (SAHRC) was established in October 1995, but it does currently monitor places of detention, although the SAHRC allegedly conducted visits to prisons, immigrant detention centres and police stations before the creation of the JIP.</p> <p>In addition, some specific bodies were put into place at the end of the apartheid to oversee the police, including: the Independent Complaints Directorate; National and Provincial Secretariats of Safety and Security; Provincial and area police boards and Community Police Forums. However, none of those mechanisms seem suitable to assume the NPM mandate, mostly due to a lack of credibility. Finally, some bodies have been established to oversee mental health institutions (Mental Health Review Boards) and children's institutions, but they do not conduct systematic preventive visit. The review also identifies some gap in the oversight of immigrants and refugees detention centres.</p> <p><u>Possible NPM options</u></p> <p>The review published by CSV proposed four NPM options to be established, with the advantages and challenges of each.</p> <ul style="list-style-type: none"> - <u>Option 1:</u> The SAHRC coordinates existing inspectorate bodies, with the creation of a specific Secretariat within the SAHRC, and a broader mandate for the JIP. This option would ensure coherence in standards and methodology, and would be the opportunity to strengthen existing institutions. The main challenges would be the coordination of existing bodies, the need for additional financial resources and legal reforms and the perceived lack of credibility of certain existing mechanisms. - <u>Option 2:</u> The Judicial Inspectorate is the NPM, with a broader mandate to cover all places of detention. The main advantages of this option are to take the opportunity of existing expertise within the institution, and the existing mandate relates closely to the OPCAT. However, the institution would require not only additional human and financial resources, but also institutional restructuring in order to be fully independent. - <u>Option 3:</u> A New Independent Inspectorate would be created and would be fully devoted to OPCAT. In that case, the JIP would only deal with individual complaints of prisoners. According to the review, a new institution would face some difficulties in building support and credibility, as well as political challenges. In addition, it would be a lost opportunity to strengthen existing institutions. - <u>Option 4:</u> The SAHRC coordinates independent experts, and a specific Secretariat would be created within the institution. The visits to places of detention would be undertaken by independent experts rather than existing institutions, on a contract basis or grant system. This option would be cost effective, and a relevant mean to bypass current weaknesses of existing institutions. This would also represent a proactive option to involve civil society, with certain flexibility on contracting experts. However, a string secretariat would be required, the civil society organisations would face a challenge in loosing their "critical role, and there would exist the risk of lacking institutional memory. <p>The review does not give any particular recommendations for an NPM option, but it represents a useful tool for further national discussion on the most appropriate South African NPMs.</p> <p>Back in November 2007, the Section 5 Committee members generally agreed that it would be preferable to adapt existing inspection mechanisms rather than establish a new body. The consensus was in favour of a mixed model, with a number of thematic preventive mechanisms coordinated by a central NPM, most likely the SAHRC. However, an internal discussion of this possibility has yet to take place within the SAHRC.</p>
<p>Legal framework</p>	<p><i>No NPM establishment law adopted yet</i></p>

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OPCAT Country Status - Africa

Togo

Signature: 15 September 2005 - **Ratification:** under consideration

Updated on 22 December 2008

Background information	<p>Population: 5,548,702 Area (sq km): 56,785 Prison population: 3200 Number of prisons: 12</p> <p>Upon his death in February 2005, President Eyadema was succeeded by his son Faure Gnassingbe. The succession, supported by the military and in contravention of the nation's constitution, was challenged by popular protest and a threat of sanctions from regional leaders. Gnassingbe succumbed to pressure and agreed to hold elections in late April 2005 to legitimize his succession.</p> <p>The security forces are consist of the army, navy, air force, the national security service (including the national police and investigation bureau), and the gendarmerie. The police are under the direction of the Ministry of Security, while the Ministry of Defence oversees the gendarmes and military. Legally, the police and gendarmes are responsible for law enforcement and maintenance of order within the country. However, as of 2005 the army, charged with external security by law, was actually in command of domestic security.</p> <p>The OHCHR has opened a new country office in Lomé, following the signature of the Memorandum of Understanding with the Government of Togo on 10 July 2006.</p> <p><u>Consideration by international human rights mechanisms</u></p> <p>CAT considered Togo in July 2006 Togo CAT Concluding Observations</p> <p>The Special Rapporteur on Torture visited Togo on 10-17 April 2007 Report Special Rapporteur Togo</p>
OPCAT ratification and NPM designation processes	<p>In February 2008, the APT participated in a national workshop organized by the Interparliamentary Union (IPU) and the National Assembly of Togo on how to enhance the participation of the Togolese parliamentarians in the work of the Human Rights Treaty Bodies. At the end of the seminar, the OPCAT ratification was identified as a short-term priority in terms of ratification of international human rights treaty by Togo</p> <p>The APT was informed during this seminar that some Togolese NGOs and the National Human Rights Commission are currently conducting visits to places of detention. Nevertheless, it was reported that the access to those places is difficult for the civil society due to a very complicated procedure and a lack of financial resources to carry out regular visits to all regions of the country. The National Human Rights Commission visits places of detention once or twice a year.</p> <p>In October 2008, the APT took the opportunity of its presence in the country to promote a prompt ratification of the OPCAT. In that context, the APT co-organized a roundtable discussion on the OPCAT, with the OHCHR Office in Togo. The APT was informed that a draft law on OPCAT ratification was submitted to the Parliament in August 2008 and is currently under consideration by the Human Rights and Foreign Affairs Commissions of the Parliament. It is expected that Togo will ratify the OPCAT in March 2009.</p>
NPM options	<p>The APT has been informed that the creation of a new mechanism is envisaged to assume the mandate of the National Preventive Mechanism in Togo.</p>
Legal framework	<p><i>No NPM establishment law adopted yet</i></p>

OPCAT Country Status Americas

Shaded boxes: States Parties to the OPCAT

Unshaded boxes: States that have signed the OPCAT or are due to sign it in a near future

ArgentinaRatification: 15 November 2004 - **NPM establishment:** pending

Updated on 18 May 2009

Background information	<p>Population: 39,921,833 Area (sq km): 2,766,890 Prison population: 54 472 Number of prison institutions: 208</p> <p>Cristina Fernández de Kirchner took office in December 2007, continuing the bold human rights policy of her predecessor, particularly advancing on truth and justice for gross violations under the military junta (1976 to 1983).</p> <p>Argentina was the first Federal State and the first State in Latin America to ratify the OPCAT. It was also the first State to inform the CAT of its ratification.</p> <p>Mr. Mario Luis Coriolano of Argentina was elected as a member of the SPT on 18 December 2006 for a two year term and was re-elected in October 2008 for a four-year term. Mr. Coriolano is Vice-president of the SPT.</p> <p><u>Consideration by universal human rights mechanisms</u></p> <p>CAT examined Argentina's report in 2004 CAT Concluding observations</p> <p>Argentina report was examined by the HRC during the UPR in April 2008 Report of the Working Group</p> <p>The Human Rights Committee will examine Argentina's report in October 2009 National report</p> <p><u>Federal Structure:</u></p> <p>Argentina is divided into 24 jurisdictions (23 provinces and the Autonomous City of Buenos Aires)</p>
NPM designation process	<p><u>Challenges linked to the federal structure:</u></p> <p>In Argentina's federal system, the Federal Government has constitutional authority to ratify treaties, which become part of the Constitution, and is internationally responsible for their implementation. Legally, the provinces are expected to implement the Constitution, but in practice effective implementation depends on their political will.</p> <p>The Federal Government decided to act on its authority to ratify the OPCAT quickly, only subsequently initiating detailed consultations with the provincial governments regarding implementation, expecting that acquiring the international obligation first would then prompt provincial governments to implement the treaty.</p> <p><u>NPM process:</u></p> <p>In Argentina, several parallel and complementary NPM processes are currently underway.</p> <p>The first process on OPCAT implementation to initiate shortly following ratification was led by the Human Rights Secretariat of the Ministry of Justice (for a detailed report on their activities view 2008 report). In 2006, following directives from the President's Office, the Ministry completed a first draft NPM law (rather than a decree, as initially foreseen) which foresaw the creation of a new body as NPM at a federal level with each province able to designate local NPMs. The draft was discussed at the Federal Human Rights Council (an inter-institutional body comprised of authorities of each province and coordinated by the Human Rights Secretariat) and with selected federal authorities and NGOs. In response to concerns about the closed consultation process, the NPM draft was made public and a workshop to discuss its content was convened in December 2006. Conclusions of the event were to be taken into account for preparing a new draft, which was not made public thus leading to questioning of the transparency of the process. The October 2007 presidential elections also temporarily stalled the process.</p> <p>The Universal Periodic Review (UPR) of Argentina in April 2008 provided the opportunity for new impetus to the process. The governmental delegation committed that it would designate the NPM shortly, reporting that the process had been slowed by a number of challenges, namely: a) independence (the first draft law foresaw the NPM within the executive sphere but was changed to the legislative); b) its relationship with existing monitoring bodies (which should not be debilitated as a consequence of the NPM and c) the federal structure (a clause for voluntary adhesion by the provinces was under consideration).</p> <p>In order to give new impulse to the prolonged official designation process, civil society organizations initiated a complementary process. In March 2008, the national NGO CELS convened a national workshop on OPCAT, presenting a document on minimum standards for NPM</p>

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Argentina

Ratification: 15 November 2004 - **NPM establishment:** pending

Updated on 18 May 2009

implementation in Argentina. As a result, a civil society working group was formed to draft an alternative NPM proposal. The proposal, which envisages a **National System to Prevent Torture** to strengthen existing governmental and non governmental visiting bodies, was completed and presented to the Minister of Justice in June 2008.

In September 2008, the NPM debate reached the federal congress. In the weeks leading up to an international seminar on OPCAT in federal states taking place in Argentina (Seminar Conclusions in [English](#) and [Spanish](#)), a federal congresswoman presented an NPM draft law, largely reflecting the content of the civil society proposal. Following this, the NGOs presented their original draft law and at least one other federal deputy presented a separate draft law. These drafts foresee some role in the NPM for the Prison Ombudsman Office (*Procuración Penitenciaria*), an established body monitoring federal prisons which has been actively promoting OPCAT ratification and implementation. For this reason, the NPM designation process has become associated with the prolonged and highly polemical process to name a new Prison Ombudsman.

In addition to debates taking place at a federal level, **local NPM processes** to create provincial preventive bodies to complement the federal one, have initiated. Debates, draft laws and proposals have been advanced in a number of provinces, including Buenos Aires, Córdoba, Mendoza, Neuquén, Rio Negro and Tierra del Fuego. A law creating a committee against torture in the Province of Rio Negro was approved by the provincial legislative body in late 2008. Although the new committee does not meet all NPM requirements, the law does mention the OPCAT, leading to its status within the OPCAT system when the federal government has yet to decide on the NPM.

NPM options**Existing monitoring bodies**

A number of organisations and institutions in Argentina have a mandate and established practice of visiting places of detention. Notably, the Prison Ombudsman Office (*Procuración Penitenciaria*) has a legal mandate to visit all places of detention under federal jurisdiction. An Ombudsman Office (*Defensoría del Pueblo*) with visiting powers also exists, both at the federal level and in some provinces. A range of local and national civil society organisations also have experience of visiting places of detention. The Public Defenders and Public Prosecutors Office are also active in monitoring.

INITIATIVES AT THE FEDERAL LEVEL**1. Draft law - National system to prevent torture and other ill-treatment**

The first draft NPM law to be presented to Congress (by federal deputies Ms Conti and Mr Rossi), mostly reflects the civil society proposal. It proposes the **creation of a national system to prevent torture**, which comprises a new National Committee with functions to coordinate, articulate and improve standards of existing monitoring bodies; new local preventive mechanisms in the provinces; and other institutions relevant for the purpose of the OPCAT. Particular attention was paid to strengthening, articulating and articulating existing monitoring mechanisms to form a coherent torture prevention system.

Composition

The National System to Prevent Torture would be comprised of:

- a new **National Committee for Torture Prevention**, composed of 7 members. The principles of federal composition, gender balance, non-discrimination and multidisciplinary should be taken into account for the selection of the members, who would be elected by the Congress after a public selection process.
- **local mechanisms for torture prevention** which are designated within the jurisdiction and with competencies to act at the federal level, provincial level or for the Autonomous City of Buenos Aires.
- Governmental institutions, public institutions and interested civil society organizations.

Financial resources

- The National Committee for Prevention of Torture would have a President and an Executive Secretariat to assist the members. The Secretariat would be selected after a public recruitment process, with participation from all sectors.

- The members of the National Committee would be unpaid, but would receive per-diems and

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Ratification: 15 November 2004 - NPM establishment: pending

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compensation of their expenses.

Monitoring places of detention

- The **National Committee for Prevention of Torture** would monitor any place of detention, at any time.
- The **local mechanisms for prevention of torture** would monitor all places of detention relevant to their jurisdiction, with or without prior notice. The federal mechanism would have competence over the places of detention with federal jurisdiction.
- Any institution or organisation which is part of the national system to prevent torture would have access to information regarding people deprived of their liberty, their conditions of detention and the places of detention. They would have the right to conduct interviews in private with the person of their choice.

Making public and policy recommendations

- The **National Committee for Torture Prevention** would publish an annual report which would be channelled to the SPT, as well as thematic reports. The National Committee would coordinate and articulate the work of the local mechanisms for prevention of torture, including elaborating standards and advising them on their implementation.
- Any institution or organisation part of the national system would design and recommend the actions and policies to prevent torture.
- The relevant authorities would have the duty to reply to the institution or organisation part of the national system within 20 days.

Cooperation with other entities

- The National Committee for Torture Prevention would collaborate with the Prison Ombudsman, local preventive mechanisms and other components of the national system.
- The National Committee and the local mechanisms would have the right to collaborate with any institution or organisation, through agreements of collaboration for instance.
- The National Committee would convene an annual meeting to coordinate activities and relevant issues with the members integrating the national system.
- The National Committee would generate cooperation with universal and regional bodies, and would be the representative of the national system before the UN Subcommittee on Prevention of Torture.

Other relevant issues

- The National Committee for Prevention of Torture would be in the sphere of the Congress.

2. Draft Law - National Torture Prevention Mechanism

Shortly following the presentation of the law described above, another NPM draft law was presented to Congress (by the Federal Deputy Mr. Cusinato). This law also proposes a composite NPM structure of local and federal mechanisms working in coordination and foresees a central role for civil society organisations. The National Preventive Mechanism foreseen in the law would be comprised of the Federal Council of the NPM, the Prison Ombudsman Office, the Provincial Torture Preventive Mechanisms and civil society organizations.

The law also provides for a “transitory period” while elections of the NPM members take place. Until 5 Provincial Mechanisms and 10 civil society organisations are designated, the functions of the Federal Council would be assumed by three experts, who would be designated by the Bicameral Commission of the Ombudsman. Those experts would be remunerated and the transitional structure would be in the sphere of the Bicameral Commission of the Ombudsman.

Composition:

- A new **Federal Council of the NPM**, comprised of 9 counsellors: two national legislators, the Prison Ombudsman, three representatives of the Provincial Preventive Mechanisms and three representatives of the civil society members of the NPM. They would work *ad honorem*. A National Observatory for Prisons and the Executive Secretariat of the Federal Council would be

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created and be integrated into the Federal Council, which would be in the sphere of the Congress.

- **Provincial Torture Prevention Mechanisms** would be designated by each Province six months after the adoption of the NPM law. The official designation of the Provincial Mechanisms would be submitted for prior admission by the Federal Council provided they comply with articles 17 to 24 of the OPCAT. Transitory admission could be granted by the Federal Council provided that the Provincial Mechanisms would comply with the OPCAT requirement within a determined timeframe.

- Civil society organisations, including **NGOs, national or provincial universities and professional associations** could be members of the NPM, provided prior evaluation on their statute and mandate by the Federal Council, for an initial period of two years, provided they comply with article 18 of the OPCAT.

Financial resources:

- The organizational and administrative structure of the Federal Council would be established by the Bicameral Commission of the Ombudsman.

Monitoring places of detention:

- The Federal Council, the Provincial Mechanisms and civil society organisations would assume the mandate of the NPM as provided for by articles 19 and 20 of the OPCAT.

Making public and policy recommendations:

- The Federal Council would decide upon the NPM membership of the provincial mechanisms and civil society organisations, according to a specific procedure.

- The Federal Council and the members of the NPM have the right to submit to the authorities, observations, recommendations and proposals for new measures to prevent torture.

- The Federal Council and the members of the NPM have the right to assess federal and provincial authorities in the adoption or reform of preventive measures.

- The Federal Council would publish an annual report, which would compile all the NPM members' recommendations, complaints and reports.

- The Provincial Mechanisms would send an annual report of their activities to the Federal Council.

Cooperation with other entities:

- The Federal Council's President would maintain relations with the SPT.

3. Civil society draft law – National system to prevent torture and other ill-treatment

The draft law, elaborated by a coalition of civil society organisations, proposes the **creation of a national system to prevent torture**, which comprises a new National Committee with functions to coordinate, articulate and improve standards of existing monitoring bodies and new local preventive mechanisms in the provinces of this federal state. The first draft NPM law to be presented to Congress and described above largely incorporates the elements of the civil society proposal with a few specific omissions and amendments.

Other relevant issues

- Any organisation from the civil society interested in issues relevant to deprivation of liberty would be able to continue monitoring places of detention

- Any institution or organisation part of the national system to prevent torture would have to right to elaborate recommendations and observations

INITIATIVES AT THE PROVINCIAL LEVEL

Debates and discussions are already ongoing in various provinces on how to implement the OPCAT at the local level, including in the provinces of Buenos Aires, Chubút, Córdoba, Mendoza, Neúquen, Río Negro and Tierra del Fuego.

1. Creation of a follow-up committee to the CAT as local preventive mechanisms
(Provinces of Río Negro and Tierra del Fuego)

In late 2008, a law creating a Committee of Evaluation of Follow-up and Implementation of the CAT (Committee against Torture) was adopted in the Province of Río Negro, in the framework of the

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Ratification: 15 November 2004 - NPM establishment: pending

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ratification of the OPCAT by Argentina. This Committee would be integrated by six to ten representatives of the province from civil society organisations; two representatives of the legislature; one representative of the executive power and one representative of the judicial power. The legislative, judicial and executive power would select their own representatives, while the Human Rights Commission of the Parliament would select the representatives from the civil society organisations. The Committee would be granted with several rights, including to :

- conduct periodic and unannounced visits to all places of detention in the Province of Río Negro
- elaborate proposals, suggestions and recommendations on public policies to improve detention practices
- conduct specific reports on conditions of detention
- receive complaints on physical and psychological violations of persons deprived of their liberty
- elaborate an annual report of activities

The APT was informed of a similar provincial mechanism proposal which is under consideration by the legislative power in the Province of **Tierra del Fuego**.

SPT communications

[Official correspondence to the SPT](#) on the NPM designation (30 October 2008)

Legal framework**Federal draft laws:**

No NPM law at a federal level has been adopted yet

- [Conti and Rossi NPM draft law](#) (N° 4934-D-2008)
- [Cusinato NPM draft law](#) (n°5034-D-2008)
- [Civil society draft NPM law](#) and [explanatory note](#)

Provinces:

- [RIO NEGRO NPM Law](#)
- [TIERRA DEL FUEGO draft NPM law](#)

Bolivia

Ratification: 23 May 2006 - NPM designation: pending

Updated on 19 May 2009

Background information	<p>Population: 8,989,046 Area (sq km): 1,098,580 Prison population: 7 710 Number of prisons: 67</p> <p>On December 2005, the indigenous leader Evo Morales was elected President of Bolivia, a country of great social divisions between the historically discriminated indigenous majority and the white or ladino minority. The Morales Government has embarked on an ambitious program to reform class and power structures, including drafting a new Constitution. Social unrest has followed, including calls for autonomy from various provinces.</p> <p>Bolivia signed the OPCAT on 23 May 2006 and ratified the following day. This ratification, together with Honduras on the same day, led to the OPCAT's entry-into-force on 22 June 2006.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>IAHRC published a thematic report on access to justice and social inclusion in Bolivia in June 2007 Report IAHRC Bolivia</p> <p>CAT examined Bolivia's report in 2001 CAT Concluding observations</p>
NPM designation process	<p>The campaign for OPCAT ratification provided the opportunity to initiate considerations about NPM designation. Most notably, the NGO ITEI (<i>Instituto de Terapia e Investigación sobre las Secuelas de la Tortura y la Violencia Estatal</i>) made the issue a central part of its 26 June activities. For its part, the Ombudsman's Office (<i>Defensoría del Pueblo</i>) promoted ratification and, following this, has reminded national authorities of the international obligation to designate an NPM.</p> <p>In preparation for a regional OPCAT seminar in MERCOSUR taking place in Paraguay in May 2007, the Ministry of Foreign Affairs of Bolivia convened several meetings with national authorities, civil society organizations and the Ombudsman Office to initiate discussions on NPM options. Several prisoners attended one of the meetings. However, the proposal to establish a working group to take the process forth never took shape and the process of consultations stalled.</p> <p>In September 2007, with the support of the Ministry of Foreign Affairs of Bolivia, the APT organized a mission to Bolivia with the participation of two SPT members with the objective of promoting and advising the NPM process. A workshop with relevant actors was convened during which the Ministry of Justice committed to convening a broader meeting with the participation of social movements in the near future, which never took place.</p> <p>During the initial debates about the NPM, there was an incipient consensus to designate a "mixed option" with the participation of the Ombudsman's Office and civil society organisations with an established human rights track record. Although the Ombudsman's Office was initially open to such a possibility, the institution later announced its intention not to assume the NPM mandate.</p> <p>During the September 2007, the APT learned that the Ministry of Justice was also considering having a direct role within the NPM. When questioned about the independence of such an option, authorities replied that the government, supported by social movements, was leading profound "changes of paradigms" which blur the traditional separation between state and civil society.</p> <p>ITEI, one of the NGOs actively participating in the NPM consultations, drafted a decree to create a new institution as NPM. Initially drafted as a way to promote debate around a concrete proposal, the draft text was finally presented to the Ministry of Foreign Affairs and the Ministry of Justice in 2008. The three institutions met at several occasions to discuss the content and provisions of the draft legislation, which was sent for comments and observations to the OHCHR Office in Bolivia, the Vice Minister of Justice and Human Rights, and the Inter-American Commission on Human Rights. The final NPM legislation is currently under consideration by the Ministries of Foreign Affairs and Justice, before its examination by the National Congress. It is unclear whether the draft law has found consensus with the institutions mentioned above and other relevant actors.</p> <p>In addition, the 2009-2013 National Human Rights Action Plan adopted by Bolivia provides for establishment and effective functioning of the NPM by 2009.</p>
NPM options	<p><u>Existing monitoring mechanisms</u></p> <p>The Ombudsman's Office, which has a broad mandate to enter any place of detention without any restriction whatsoever, conducts visits to detention facilities in response to complaints, as well as to</p>

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Bolivia

Ratification: 23 May 2006 - NPM designation: pending

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	<p>monitor the general situation. However, the institution was restructured, leading to a certain weakening of its prison monitoring programme in terms of human and financial resources and visibility with the persons deprived of their liberty.</p> <p>Some NGOs have been working closely with torture related issues, including the human rights network (<i>Asamblea Permanente de Derechos Humanos</i>), established over thirty years ago, following the fall of the repressive military regime (1971-1978). The ITEI was established more recently primarily to provide rehabilitation for victims of torture by the dictatorship and actively campaigned for OPCAT ratification and implementation.</p> <p>Proposed NPM options</p> <p>Several options were initially considered, including the creation of a new institution as NPM, an “Ombudsman plus civil society option” and a formal involvement of the governmental agencies in the functioning of the NPM. Although the Government is currently considering creating a new institution as an NPM, on the basis of the draft proposal presented by ITEI, some organisations from the civil society are still reported to be in favour of the “Ombudsman plus option”.</p> <p>In December 2008, the comments from the OHCHR Office in Bolivia and the Vice-Minister of Justice and Human Rights were incorporated into the draft NPM proposal. It is worth mentioning that some amendments focused on the need to reinforce the autonomy of the NPM from any other existing institutions. In addition, it was stated that the NPM mandate should not be extended to investigatory functions, as prevention of torture and other ill-treatment is at the core of its mandate.</p>
SPT communications	<p>Official correspondence to the SPT on the NPM designation (31 March 2009)</p> <p>Annex 1; Annex 2; Annex 3; Annex 4</p>
Legal framework	<p><i>No NPM establishment law has been adopted yet</i></p> <p>PROYECTO DE LEY</p>

OPCAT Country Status - Americas

Brazil

Ratification: 12 January 2007 - **NPM establishment:** pending (should have been designated by 12 January 2008)

Updated on 19 May 2009

Background information	<p>Population: 188,078,227 Area (sq km): 8,511,965 Prison population: 361 402 Number of prisons: 868</p> <p>In 2002, the UN Special Rapporteur on Torture, then Nigel Rodley, visited Brazil, the most populous country in South America and a federal state. The report concluded that torture was “<i>widespread and systematic</i>” in prisons and police cells. In 2005, amidst continuing allegations, the UN Committee against Torture (CAT) visited the country. In response, the Human Rights Department of the Presidency (<i>Secretaría de Derechos Humanos</i>) spearheaded frequent initiatives to combat torture, including a national campaign. Nevertheless, the human rights policy of President Lula (who initiated his second term of office in January 2007) and his predecessors have not managed to put a dent in the practice of torture.</p> <p><u>Consideration by international human rights mechanisms</u></p> <p>CAT visited Brazil in July 2005 CAT visit report</p> <p>CAT considered Brazil in 2001 CAT Concluding observations</p> <p>Brazil presented its report to the first Universal Periodic Review of the Human Rights Council Report of the Working Group</p> <p><u>Federal Structure:</u></p> <p>Brazil is divided into 26 States and one Federal District.</p>
NPM designation process	<p>Debates about NPM implementation initiated before OPCAT ratification. Amongst others, in June 2006, the APT and the Center for Justice and International Law (CEJIL) convened a seminar on OPCAT implementation in Brazil and other Federal and Decentralized States. An assessment paper of existing monitoring mechanisms and seminar participants concluded that the plethora of commendable monitoring efforts were beset by serious short-comings and therefore recommended that a new body be created as NPM.</p> <p>The Human Rights Secretariat of the Presidency is officially in charge of coordinating the NPM definition process. The Secretariat established by decree (signed by the President on 26 June 2006) a National Committee to Prevent and Combat Torture comprised of representatives of the state and civil society with the dual objectives of supervising the Secretariat’s pilot project to combat torture in eight states and to propose independent national preventive mechanisms.</p> <p>The Committee, which has met several times since its creation, convened together with the APT in April 2007 a workshop on the NPM with the National Committee to Prevent and Combat Torture. At the workshop, general principles and considerations guiding the NPM and their applicability to Brazil were addressed. For the first time, a State Party to the OPCAT requested the advice of the SPT on the NPM designation process by inviting one of its members to participate in the workshop.</p> <p>A draft law on the establishment of the NPM was then drafted by the Human Rights Secretariat and submitted for consultations with relevant ministries. Significant amendments were made to the first draft proposal and a second draft was then made public. The Human Rights Secretary convened meetings in a few States to discuss this draft proposal and a meeting of the National Committee to Prevent and Combat Torture was convened on 18 September 2008 in Brasilia, with the participation of the APT, to revise this draft. On the basis of the observations received and considerations of an international seminar on OPCAT in federal states which took place in Argentina in September 2008, the Human Rights Secretariat drafted a third proposal for the NPM. This version is currently being finalized and was submitted for scrutiny to the Presidency’s Legal Affairs Advisory Department (Civil House), with a special request for congressional approval under constitutional urgency. This draft proposal has not yet been made public.</p>
NPM options	<p><u>Existing monitoring mechanisms</u></p> <p>In June 2006, in the framework of the seminar on OPCAT and Federal States mentioned above, an audit of the most relevant existing monitoring bodies in Brazil in light of the NPM standards was drafted as background information. Brazil has a wide range of detention monitoring mechanisms, accordingly to the specific places of detention. We could mention the following:</p> <ul style="list-style-type: none"> • prisons: Prison Judges, National Council of Criminal and Penitentiary Politics (Conselho Nacional de Política Criminal e Penitenciária), National Penitentiary Department (Departamento

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Brazil

Ratification: 12 January 2007 - **NPM establishment:** pending (should have been designated by 12 January 2008)

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Pentenciário Nacional), Penitentiary Council (Conselho Penitenciário), Community Councils (Conselho da Comunidade) and NGOs (Prison Pastoral Services, ACAT-Brazil, Grupo Tortura Nunca Mais)

- **psychiatric centres:** Federal Council of Psychology (Conselho Federal de Psicologia); Bar Association (Ordem dos Advogados do Brasil); National Inspectorate of Psychiatric Units in favour of Human Rights (Inspeção Nacional de Unidades Psiquiátricas em prol dos Direitos Humanos)

- **places of detention for juveniles:** National Council for Children and Adolescents (Conselho Nacional da Criança e do Adolescente), Juveniles judges, specific Councils and NGOs (Association of Mothers and Friends of Children and Adolescents at Risk)

- **general monitoring mechanisms:** Parliamentary Human Rights Commission, Public Prosecutors, Human Rights Councils (Conselho de Direitos Humanos), Ombudsman (ouvidorias) and Judicial and administrative department (corregedorias)

The study concluded that those existing monitoring mechanisms were not OPCAT compliant.

Proposed NPM option

The first draft NPM law prepared by the Human Rights Secretariat in 2007, which was not made public, included the creation of a new Mobile Unit (**Unidade Móvel**) of 21 members with a secretariat as NPM. Each State in this federal structure could also designate its own local preventive mechanism. Additionally, the draft legislation formalized the existing Committee to Prevent and Combat Torture with a role for designating the NPM members and helping to implement its recommendations.

In its report to the Human Rights Council in February 2008 in the framework of the Universal Periodic review, Brazil states that “ *The creation of the National Committee for Prevention and Fight Against Torture in Brazil, on June 26, 2006, and the ratification of the Facultative Protocol to the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Penalties, on January 11, 2007, are important institutional milestone for the effective and permanent fight against torture. Arrangements are being made for the construction of a national mechanism of prevention and fight against torture, complying with the commitments established in the recently ratified Additional Protocol.* ”

The second NPM draft law, produced in 2008, envisaged designating existing institutions as the NPM, with the creation of a reduced Mobile Unit. This second draft was analysed during various meetings which took place in September 2008.

The following analysis is based on the second draft NPM law, which is subject to change. The APT is aware of ongoing revisions underway, but a new draft has not yet been made public.

Composition

The draft NPM law envisaged to designate the following existing institutions as NPM:

- prison judges from the Federal and State level
- children and Adolescents judges from the Federal and State levels
- members of the Public Prosecutor’s Office
- members of the Public Defenders’ Office, from the Union, States and Municipalities
- a new **Mobile Unit of Prevention of Torture**

The **Mobile Unit** would be composed of ten members (initially it was composed of 21 members), comprising:

- one Public Defender from the Union of Public Defenders;
- two judges (one from the Federal Justice System and the second one from the State Justice System);
- two members from the Public Prosecutor’s Office (one from the state level and the other from the federal level)
- five members appointed by the National Committee to Prevent and Combat Torture and designated by the President of the Republic.

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Brazil

Ratification: 12 January 2007 - **NPM establishment:** pending (should have been designated by 12 January 2008)

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Monitoring places of detention

The Mobile Unit would have the duty to:

- conduct regular visit to people deprived of liberty, resulting from any form of detention, imprisonment or placement in public vigilance establishments, in order to monitor the conditions to which they are submitted

The Mobile Unit members would be granted:

- access to information relative to the number and identity of people deprived of liberty; their conditions of detention and treatment; and the number, capacity and location of detention facilities,
- access to all places of deprivation of liberty, their facilities and equipments, with the possibility of conducting unannounced visits;
- right to interview people deprived of their liberty or any other person who may share relevant information, in private and without any witness, and in a location which ensures the required security and confidentiality
- right to choose the places to visit and people to interview;
- right to demand probationary inquiries

The draft law explicitly foresaw that the creation of the Mobile Unit would not limit access to detention centres by other public institutions or organisations from the civil society, who also combat the practice of torture and ill-treatment of people deprived of their liberty.

Making public and policy recommendations

The Mobile Unit would have the duty to:

- write periodic reports of the visits to places of detention within one month after the visit and present them to the National Committee to Prevent and Combat Torture, the General Attorney's Office and to the detention authorities;
- elaborate, on an annual basis, a report on the prevention of torture in Brazil, with a analysis of the situation at both the Federal and State levels; and propose measures that should be adopted to improve the situation;
- make recommendations and observations to the authorities
- ensure the fulfilment, of the administrative and judicial investigation and sanction of public agents involved in the practice of torture

Cooperation with other entities

The **Mobile Unit** would have the right to:

- establish agreement of understanding to implement Mobile Units, both at the federal and State levels
- articulate with the UN Subcommittee on Torture Prevention.

Prison judges, Children and Adolescents judges and members of Public Prosecutors' Offices would inform the National Committee to Prevent and Combat Torture on the irregularities and evidence on cases of torture and ill-treatment.

Other issues

The relation between specific functions of each of these components is unclear.

SPT communications

[Official correspondence to the SPT](#) on the NPM designation

Legal framework

No NPM establishment law has been adopted yet

OPCAT Country Status - Americas

Canada

OPCAT accession and implementation: under consideration

Updated on 3 December 2008

<p>Background information</p>	<p>Population: 33 223 840 Area (sq km): 9 984 670 Prison population: 35 110 Number of establishments / institutions: 172</p> <p><u>Consideration by international human rights mechanisms:</u> CAT considered the report of Canada in May 2005 CAT Concluding observations</p> <p><u>Federal Structure:</u> Canada is divided into 10 provinces and 3 territories.</p> <p><u>Consideration by international human rights bodies</u> Canada's report was examined by the UPR of the Human Rights Council in February 2009: National report</p>
<p>OPCAT ratification and NPM designation processes</p>	<p><u>Challenges linked to the Federal Structure</u> Canada has established permanent mechanisms to deal with international human rights obligations, including the ratification and implementation of new international human rights treaties. In Canada, the Federal government has constitutional authority to sign and ratify treaties and is responsible in international law for implementation of treaties. If, under the division of powers in the Canadian Constitution, the Federal government is allocated legislative authority in respect of the actual subject-matter of the treaty, it can take action to implement the treaty; however, if the subject-matter of the treaty falls within provincial legislative authority, it is the Province that must implement the treaty.</p> <p>The Federal government and Provinces together created, in 1975, a "Continuing Committee of Officials on Human Rights" that includes civil servants representing federal departments relevant to human rights, as well as representatives of each of the provincial and territorial governments within Canada.¹ The Committee deals with Canada's international human rights obligations.</p> <p><u>Jurisdiction</u> Places of detention fall under overlapping areas of authority, depending on the length of the prison sentence, the arresting police force, the location of the facility, and other factors. Therefore, in practice the Federal government will seek the consent of the Provinces before it signs or ratifies the OPCAT, because the Federal government cannot force the Provinces to comply with the obligations in OPCAT.²</p> <p>Frequency of visits foreseen by the OPCAT may have an impact on costs, particularly in a geographically dispersed country such as Canada. It appears that the allocation of costs of implementing OPCAT, as between the Federal and Provincial Governments, may be an issue.</p> <p><u>OPCAT processes</u> Although Canada had strongly supported the OPCAT throughout the drafting process and voted in its favor in the United Nations 2002, it has not signed nor ratified it yet.</p> <p>In January 2005, the Canadian government and the APT jointly convened a meeting of Geneva-based diplomats from Federal and De-Centralized States, to discuss the challenges faced by those countries in implementing the OPCAT. At that time, Canadian officials reported that inter-ministerial consultations were underway at the federal level. Discussions were reportedly also taking place in Canada's ten provinces and three territories, in the framework of the Continuing Committee of Officials on Human Rights (CCOHR).</p> <p>In December 2005, Amnesty International – Canada, the Canadian Association of Elisabeth Fry Societies and the APT wrote a joint letter to all federal political parties, asking them to make their position on the OPCAT public before the January 2006 federal election vote. The only response</p>

¹ See Koren Bell, "From Laggard to Leader: Canadian Lessons on a Role for U.S. States in Making and Implementing Human Rights Treaties" (2002) 5 Yale H.R. & Dev. L.J. 255.

² "In order to avoid the problem of being internationally accountable for obligations that it cannot fulfil, the Federal government has adopted a practice of consulting with the provinces and territories, and obtaining their consent, before signing and ratifying treaties relating in whole or in part to matters within their jurisdiction." The practice was formalized in an agreement reached at a 1975 meeting of federal and provincial ministers responsible for human rights. At the same meeting, the Continuing Committee of Officials on Human Rights was set up. *per* Parliament of Canada, Senate, *Promises to Keep: Implementing Canada's Human Rights Obligations*, Report of the Standing Senate Committee on Human Rights (December 2001).

Shaded boxes: States Parties to the OPCAT

Unshaded boxes: States that have signed the OPCAT or are due to sign it in a near future

OPCAT Country Status - Americas

Canada

OPCAT accession and implementation: under consideration

Updated on 3 December 2008

	<p>received was that of the Conservative Party of Canada, which vowed to seize the Parliament on this matter if they won the January 2006 federal election. The Conservatives came in first, but were denied a majority government.</p> <p>In June 2007, the Parliamentary Sub-committee on International Human Rights (SIHR) held hearings on the OPCAT, to which the APT participated. Unfortunately, the timing was bad, as Parliament suspended its activities for the summer shortly afterwards before a report or a resolution was adopted. When Parliament resumed its work in September 2007, the membership of the SIHR was changed, which meant the issue needed to be put back on the agenda. Other issues took precedence, and the OPCAT was not formally examined again.</p> <p>However, in October 2007, a MP from the New Democratic Party filed a motion calling for the government to explain why it had failed to take action on the OPCAT so far. In its written response, the government repeated the consultations were still ongoing.</p> <p>In addition, it is worth recalling that in 2006, on the occasion of the first election to the United Nations Human Rights Council, Canada pledged to “<i>consider signing or ratifying other human rights instruments, such as the Optional Protocol to the CAT</i>” if it was elected. Canada won its bid. Its mandate is due to expire in 2009.</p> <p>In the framework of its examination by the UPR of the Human Rights Council in February 2009, Canada stated: “<i>Given the shared jurisdiction under Canada’s Constitution and the importance Canada places on being in compliance with the obligations of a treaty before ratification, the federal, provincial and territorial governments undertake an extensive legislative and policy review prior to a decision on ratification. At present, Canada is undertaking this analysis in respect of the ratification of the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention against Torture and All Forms of Cruel, Inhuman or Degrading Treatment or Punishment</i>”.</p>
<p>NPM options</p>	<p><u>Existing monitoring mechanisms</u></p> <p>The only federal institution with a mandate to monitor conditions of detention (albeit on the basis of complaints) is the Office of the Correctional Investigator (OCI) which can visit all 58 facilities under the responsibility of Correctional Services Canada (and ultimately of the Department of Public Safety). The Correctional Investigator, M. Howard Sapers, has expressed the OCI’s support for the OPCAT ratification in its last three annual reports.</p> <p>All provinces, except Prince-Edward Island, have Ombudsmen’s Offices with a mandate to visit places of detention falling under their jurisdiction. It is worth noting that most visits are complaints-driven.</p> <p><u>Proposed NPM:</u></p> <p>The APT is unaware of any proposed NPM options for Canada.</p>
<p>Legal framework</p>	<p><i>No NPM establishment law has been adopted yet.</i></p>

OPCAT Country Status - Americas

Chile

Ratification: 12 December 2008 – **NPM designation:** under consideration

Updated on 19 May 2009

<p>Background information</p>	<p>Population: 16,134,219 Area (sq km): 756,950 Prison population: 39 916 Number of prisons: 149</p> <p>The negotiated transition to democracy in Chile has been characterized by relative stability and prosperity, as well as concessions to the Pinochet regime which ruled the country from 1973 to 1990, including an amnesty law for violations committed during this period. The human rights movement is very much centred on the systematic violations of the past, with relatively little attention to current abuses. The prison population in Chile has tripled since the 1980s without a corresponding increase in investment, resulting in severe overcrowding and deteriorating conditions; the democratic governments have responded through privatization schemes.</p> <p>Chile signed the OPCAT on 6 September 2005, several months after the publication of the report of the National Commission on Political Imprisonment and Torture. The report's revelation of the extent and brutality of the practice of torture under the Pinochet regime shocked the Chilean society. President Bachelet, herself a torture survivor, took office in March 2006. The death of Pinochet on 10 December 2006, International Human Rights Day, revealed deep existing divisions in Chilean society.</p> <p>Compared to other Latin America countries, prisons and other places of detention in Chile are less open to outside scrutiny. The judiciary is the public institution with the greatest presence in prisons, but its role is primarily limited to the defence of specific individuals. Human rights NGOs monitored the fate of political prisoners under Pinochet, but few examine existing detention conditions. The academic sector has taken an interest in the prison system; particularly the Diego Portales University has publishes a yearly report on prison conditions (although its access has become progressively restricted and authorities dismiss findings questioning their research methodology).</p> <p><u>Consideration by international human rights mechanisms</u></p> <p>CAT examined Chile's report in May 2009 CAT Concluding observations Chile's report was examined by the UPR in May 2009 Report of the Working Group</p>
<p>OPCAT ratification and NPM designation processes</p>	<p>The APT organized a high-level mission to Chile in May 2006 to promote the implementation of UN Committee against Torture (CAT) recommendations, including OPCAT ratification (mission report). A follow-up seminar focusing specifically on OPCAT ratification and implementation was organized by the NGO CODEPU in December 2006.</p> <p>The OPCAT ratification was approved by the Chamber of Deputies on 19 April 2007. On 12 December 2008, Chile formally became a State Party to the OPCAT.</p> <p>The issue of NPM designation was raised during the review of Chile at the UPR and the CAT the first week of May 2009. The APT meetings with Chilean authorities in the framework of these UN reviews seemed to indicate that the Government plans to designate its NPM before elections at the end of the year and are considering, amongst other options, the possibility of designating the National Human Rights Institution, once it is approved by Congress. The Ministry of Foreign Affairs of Chile and the APT will organize an OPCAT seminar in Chile in mid 2009 with the objective of making advances in the designation process.</p>
<p>NPM options</p>	<p><u>Existing monitoring bodies</u></p> <p>Compared to other Latin America countries, prisons and other places of detention in Chile are less open to outside scrutiny. The judiciary is the public institution with the greatest presence in prisons, but its role is primarily limited to the defence of specific individuals. Human rights NGOs monitored the fate of political prisoners under Pinochet, but few examine existing detention conditions. The academic sector has taken an interest in the prison system; particularly the Diego Portales University which publishes a yearly report on prison conditions (although its access has become progressively restricted and authorities dismiss findings questioning their research methodology). As far as the APT is aware, there is no existing independent body which is carrying out preventive and regular visits to places of detention in Chile.</p> <p><u>NPM options</u></p> <p>Chile is one of the few countries in Latin America without a national human rights institution. The Bachelet Government was committed to the creation of a National Human Rights Institute with a mandate to promote human rights and deal with the legacy of violations under Pinochet. Important</p>

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Chile**Ratification:** 12 December 2008 – **NPM designation:** under consideration*Updated on 19 May 2009*

modifications to the draft law have led to serious concerns by human rights advocates, and the creation of such institution suffered strong oppositions at the Parliament.

Back in 2007, parliamentary debates and MFA sources suggested that the future Institute could be designated as NPM. Nevertheless, the faculties of the Institute are restricted to visits to *public* places where people are deprived of their liberty and only members of the Institute's Executive Board (*Consejo Directivo*) may conduct visits. Furthermore, the Institute would depend on the Ministry of Justice, raising concerns about the functional independence. For these reasons, the government appears to be open to considering other options for the NPM.

Civil society organizations also advocate for the creation of a separate **Ombudsman's Office** (*Defensoría de las Personas*) with a mandate to protect human rights and review current complaints against public officials. After 18 years of discussions and debates, the Chamber of Representatives finally adopted the constitutional reform creating an Ombudsman in March 2009. The reform is currently under examination by the Senate.

The government now appears to be open to considering different options for the NPM and it remains to be seen how discussions on the both draft laws (i.e Ombudsman and NHRI) will impact the NPM designation.

Legal framework

No NPM law adopted yet.

[*Ombudsman proposal*](#)

[*National Human Rights Institute proposal*](#)

Costa Rica

Ratification: 1 December 2005 – **NPM DESIGNATED** (*Defensoría de los Habitantes – Ombudsman Office*)

Updated on 20 May 2009

<p>Background information</p>	<p>Population: 4,075,261 Area (sq km): 51,100 Prison population: 7782 Number of prisons: 26</p> <p>The Noble Laureate Oscar Arias returned for a second term in office following contested presidential elections in February 2006, with pledges to promote free trade agreements. Costa Rican prisons are not exempt from overcrowding and inadequate conditions which plague all Latin American countries; detention facilities for migrants are particularly problematic.</p> <p>Costa Rica was the second State to sign the OPCAT on 4 February 2003, followed by ratification on 1 December 2005. Costa Rica has historically been behind the OPCAT. It presented the first proposal for an Optional Protocol to the UN in 1980 and then again in 1991, eventually presiding over the Working Group established to negotiate the text during most of its ten-year existence.</p> <p>Mr. Victor Manuel Rodriguez Recsia of Costa Rica was elected to the SPT on 18 December 2006 for a two-year term and on 30 October 2008 was re-elected for a four year-term. Mr. Rodriguez is currently the Chairperson of the SPT, having served as Vice-chairperson during his first term.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>CAT considered Costa Rica in May 2008 CAT Concluding observations</p> <p>Costa Rica's report will be examined by the UPR in November 2009</p>
<p>NPM designation process</p>	<p><u>Existing monitoring mechanisms</u></p> <p>Traditionally the seat of numerous regional human rights and development organizations, NGOs working locally in Costa Rica focus primarily on concerns about the environment, labour law, children and migrant rights. The Ombudsman Office (<i>Defensoría de los Habitantes</i>) established by law in 1992 to protect the rights and interests of its inhabitants and to control the adequate functioning of the public sector, enjoys a relatively high level of public legitimacy despite some questioning of the choice of given individuals to head the institution. The Ombudsman's Office has established programmes for monitoring all types of detention facilities, sometimes jointly with other public officials including judges for the supervision of prison sentences. The latter, although insufficient in terms of numbers, have the formal authority to dictate significant institutional changes.</p> <p><u>NPM designation process</u></p> <p>A presidential decree designating the Ombudsman Office (<i>Defensoría de los Habitantes</i>) as NPM was officially published on 19 February 2007 (significantly, the same day as the inaugural session of the SPT). The formal designation followed closed inter-ministerial consultations with the Ombudsman's Office, led by the Ministry of Foreign Affairs. The designation decree refers to a formal note of the Ombudsman's Office accepting this designation as NPM on the condition of receiving adequate resources. This acceptance was necessary by virtue of the Ombudsman's Office's autonomous status.</p> <p>The decree also states that it is a temporary measure, until legislation is passed to reinforce the designation and more resources are allocated for this function. Until then, the Ombudsman's Office will fulfil the role of NPM through the regular visits that it already conducts. Furthermore, the executive decree limited access to places of detention only under executive control (excluding the judiciary), making the NPM a definition more restrictive than the OPCAT, as well as of the Ombudsman Office itself.</p> <p>Despite Costa Rica's historical leadership role on the OPCAT in the international arena, at a national level, the issue receives surprisingly little public attention. No significant public debate or civil society involvement led to the formal NPM designation, although a few public conferences, including one at the University of Costa Rica, have taken place.</p> <p>The APT visited Costa Rica in November 2007, within the framework of a regional workshop for Ombudsman Offices in Latin America organized with the Office of the High Commission for Human Rights (OHCHR), holding meetings with national authorities to promote the designation of greater resources and the approval of a law to give a more solid legal basis to the NPM. The APT also facilitated an internal meeting with the Ombudsman's Office about challenges of the NPM (see below).</p> <p>The 2008 annual report of the Ombudsman's Office has a specific section dedicated to the NPM,</p>

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Costa Rica

Ratification: 1 December 2005 – **NPM DESIGNATED (*Defensoría de los Habitantes* – Ombudsman Office)**

Updated on 20 May 2009

which reflects some of these challenges (see report below). Following this, they sent a specific report to the SPT (see report below).

In December 2008, the Ombudsman's Office was allocated resources for three additional staff and in January 2009 an NPM Unit was created within the Ombudsman's Office. In April 2009, the APT facilitated a strategic planning workshop for the NPM, in which personnel of the NPM Unit and other relevant departments of the institution jointly elaborated a Strategic Action Plan, which includes a vision, mission, objectives, activities and timeframe for the NPM.

NPM functioning**Internal organisation**

At an initial stage, a provisional plan devised by the Office of the Deputy Ombudsman entailed a transversal incorporation of NPM work within all departments of the Ombudsman's Office with a coordinating function for the Deputy. While the advantage of this plan was the possibility of more extensive coverage of places of detention, during an internal meeting with the Ombudsman's Office, the APT pointed out the following challenges: possible confusion of roles; dilution of preventive mandate; current workload of staff and the need for coordination. Furthermore, staff not previously involved in detention monitoring expressed fear of entering detention facilities. The Ombudsman's Office acknowledged the need for staff training on monitoring, as well as a monitoring guide to ensure coherence throughout the institution.

Finally, the Ombudsman's Office decided to create a **new NPM Unit within the institution** with transversal involvement of other departments in specific areas. During the strategic planning workshop with the NPM in May 2009, the lack of clarity as to whether the NPM Unit or the entire Ombudsman's Office was the NPM became apparent and the level of autonomy of the NPM Unit with respect to the hierarchs of the institution. This was resolved by clarifying who within the institution was responsible for each activity of the Strategic Plan of Action they devised and it was finally determined that while the NPM Unit has the central roles to make the NPM function, other departments within the institution also have a role to play and it is therefore recommendable to build on the strengths of working within a larger institution.

Legal basis

The Ombudsman's Office prepared a bill to enshrine its NPM mandate in law and envisages submitting it for adoption to the Congress in the near future. They have met on several occasions with the Ministry of Justice which is also committed to supporting a draft law. The draft bill would encompass the following situations:

- to widen the field of action of the NPM extending it to all administrative or judicial detention centres in the Costa Rican territory
- to provide the Ombudsman's Office with the necessary human, financial and logistical resources
- to give the Ombudsman's Office the faculty to decide on the publication of any Subcommittee on the Prevention of Torture (SPT) report which comes to its attention (a power given to States in the text of the OPCAT)

Composition

In 2009, the NPM Unit comprises three persons, including two lawyers and one political scientist with experience in monitoring places of detention, two of whom had participated in a distance-training course of the OHCHR and the APT. The NPM Unit is directly accountable to the Deputy Ombudsman. Other departments, including special protection, promotion & publications, legal issues and the regional offices (outside of the capital city) and administration, would also be involved in the NPM work. The NPM Unit can also request that its visits be accompanied by the medical doctor of the Ombudsman's Office.

Financial resources

The CAT examined Costa Rica during its May 2008 sessions and requested in its list of issues information on the additional resources granted to the Ombudsman's Office to assume its NPM functions. The budget approved for the Ombudsman's Office included the three new positions that were used to create the new Unit.

The NPM Unit has been granted its own office space and equipment within the premises of the Ombudsman's Office. It can also have access to the Ombudsman vehicle to go to its visits, if it is

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Costa Rica

Ratification: 1 December 2005 – **NPM DESIGNATED** (*Defensoría de los Habitantes – Ombudsman Office*)

Updated on 20 May 2009

	<p>requested in advance.</p> <p><u>Monitoring places of detention</u></p> <p>The designation decree makes reference to the existing legal mandate of the Ombudsman's Office to protect human rights, as well as to its established practice of periodically visiting places of detention. Nevertheless, the places of detention that the NPM may visit are limited by the decree to those under the Ministry of Public Safety (police cells), Ministry of Justice and Grace (penitentiary centres), and the detention centres for foreigners in an irregular migratory situation (General Immigrant Directorate). This definition under the decree is more restrictive than the text of the OPCAT, as well as the law and current practice of the Ombudsman's Office. In that context, the NPM adopted a progressive interpretation of the decree (whereby an international treaty has pre-eminence over a decree) and can therefore perform visits in any detention centre.</p> <p>The NPM Unit has already elaborated a programme of visits and has begun to conduct them. It is in the process of designing the format of its visits report as well as a manual of procedures for the NPM.</p> <p><u>Making public and policy recommendations</u></p> <p>The NPM is currently working on the publication of its first annual report, and has submitted various recommendations to the authorities following its visits to places of detention. Thus far, no observations have been submitted on legislation, although the NPM is directly promoting the draft law to strengthen its own legal basis.</p>
Legal framework	<p><i>Presidential decree</i> for the designation of Ombudsman's Office</p> <p>Defensoría de los Habitantes Bill</p>
NPM reports	<p>NPM report to the SPT (2009)</p> <p>Defensoría annual report - NPM (2008)</p> <p>NPM website: NPM Costa Rica</p>

OPCAT Country Status - Americas

Ecuador

Signature: 24 May 2007 - **Ratification** : under consideration

Updated on 10 June 2009

<p>Background information</p>	<p>Population: 13,755,680 Area (sq km): 283,560 Prison population: 17,065 Number of prisons: 42</p> <p>Although Ecuador marked 25 years of civilian government in 2004, the period was marred by political instability, contributing to the mid-term ouster of Ecuador's last three democratically elected Presidents. In November 2006, Rafael Correa, won presidential elections promising a social revolution to benefit the poor. As part of the process, a new Constitution was approved by referendum in September 2008 and Mr Correa was elected to a second term in April 2009.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>CAT considered Ecuador in 2005 CAT concluding observations</p> <p>Ecuador report has been considered by the HRC in the framework of the UPR in April 2008 Report of the Working Group</p> <p>HRC will consider Ecuador report in October 2009 National report</p>
<p>OPCAT ratification and NPM designation processes</p>	<p>The ratification of the OPCAT was approved by the first Commission of the Constitutional Tribunal in 2007 and has been under consideration by the National Constitutional Assembly of Ecuador since January 2007.</p> <p>A national NGO working with the rehabilitation of victims of torture (<i>Fundación PRIVA - Fundación para la Rehabilitación Integral de Víctimas de Violencia</i>) is initiating OPCAT campaigning efforts. They took advantage of a workshop on the Istanbul Protocol (manual on the effective investigation and documentation of torture) organized with representatives of the government, the Human Rights Commission of the Congress and universities, amongst others, to also raise awareness. In 2008, PRIVA conducted three workshops on OPCAT (including outside the capital), in order to agree on a national strategy for ratification. The workshops were supported by a wide range of ministries and public institutions, including: Ministry of Justice, Ministry of Foreign Affairs, Ministry of Government and Police, National Human Rights Plan, the Ombudsman (<i>Defensoría del Pueblo</i>) and the Office of the OHCHR in Ecuador. They were attended by approximately 400 persons, representing a wide range of relevant stakeholders.</p> <p>On 25 September 2008, PRIVA conducted a workshop with the 22 Ombudsman's regional offices to raise awareness about the implications of the OPCAT on their work. The offices were also invited to collect signatures to support the OPCAT ratification in Ecuador. As part of the campaigning efforts, a specific webpage dedicated to the OPCAT campaign has been created and is hosted by the Ombudsman webpage (Campaign for OPCAT ratification)</p> <p>The Ombudsman Office formally gave the signatures collected during the workshops in support of the OPCAT ratification to the President of Ecuador during a public ceremony on 12 November 2008. This initiative took place in the framework of the adoption of the new Constitution.</p> <p>In addition, Ecuador reported during the Universal Periodic Review (UPR) in April 2008 that an Operational Plan of Human Rights for Persons in Prisons is being implemented by Sub-commission comprised of public authorities, as well as human rights and prisoners organisations. This Sub-commission is training penitentiary staff in relation to human rights, with a specific focus on eradication of torture. Since 2006, the Sub-commission disseminated some documents, including on models of visits to prisons.</p>
<p>NPM options</p>	<p>The APT does not have information about any NPM options under consideration.</p>
<p>Legal framework</p>	<p><i>No NPM law adopted yet</i></p>

Guatemala

Ratification: 9 June 2008 – NPM designation: pending

Updated on 10 June 2009

Background information	<p>Population: 12,293,545 Area (sq km): 108,890 Prison population: 8,242 Number of prisons: 19</p> <p>The 36-year civil war of Guatemala ended in 1996 with a toll of over 20,000 people, mostly civilians, killed or disappeared. The deep-seated poverty and oppression of the majority indigenous population at the root of the conflict have not been overcome. Like other Latin American countries, Guatemala is caught in a spiral of responding to public demands for firmer measures to combat perceived insecurity, placing further strain on the already overstretched criminal justice and prison system. In November 2007, the social-democrat Alvaro Colom, won elections marred by violence for a presidential term from 2008 to 2012. In May 2009, President Colom's alleged links to the death of a lawyer, Rodrigo Rosenberg, have led to mounting demands for his resignation.</p> <p>The civil war of Guatemala left a legacy of vibrant though beleaguered human rights organizations, which continue to address ongoing human rights concerns including torture and ill-treatment. The OHCHR in Guatemala, within its mandate of observation and technical assistance, works actively on issues of human rights and public security.</p> <p><u>Consideration by international human rights mechanisms</u></p> <p>CAT considered Guatemala in 2006 CAT concluding observations</p> <p>Guatemala's report has been considered by the HRC in the framework of the UPR in May 2008 Report of the Working Group</p> <p>HRC considered Guatemala in 2001 HRC Concluding observations</p>
OPCAT ratification and NPM designation processes	<p>Advances on OPCAT ratification and implementation in Guatemala have been due in good measure to the advocacy efforts of a coalition of actors, including civil society organisations. The Human Rights Office of Archdiocese and the Guatemalan Institute of Comparative Penal Studies joined forces with the Ombudsman Office (<i>Procuraduría de Derechos Humanos – PDH</i>) and the Institute of Public Defence to form a working group on torture prevention to promote ratification.</p> <p>Decisive international support has also come from the Guatemala OHCHR which advises the Congress on the ratification of human rights treaties, including the OPCAT, and the Swiss Embassy. The Rehabilitation and Research Centre for Torture Victims (RCT), with specific support of the APT, has also supported the national campaign. Additionally, in May 2005, the UN Committee against Torture (CAT) urged Guatemala to give serious consideration to OPCAT ratification.</p> <p>Nevertheless, the OPCAT ratification took longer than foreseen as it was delayed within the executive. While the MFA had received favourable opinions for ratification from concerned ministries by October 2004, the bill was not forwarded to Congress until October 2005, following a conference on torture prevention convened by the above mentioned actors.</p> <p>On 7 November 2007, the Guatemalan Congress passed Decree 53-2007 approving the OPCAT. The decree was published on 5 December with the stipulation that it would enter into force 8 days later. On 9 June 2008, Guatemala ratified the OPCAT.</p> <p>Following ratification, in November 2008, the Presidential Commission of Human Rights (COPREDEH) and the OHCHR organized a workshop on OPCAT implementation where a working group to lead NPM debates was established. This was one of a series of activities that has marked the OPCAT implementation efforts and NPM drafting process promoted by the Guatemala OHCHR, in cooperation with COPREDEH, the PDH and NGOs.</p> <p>Amongst the most notable activities, we can mention that in October 2007, a three-day seminar on the OPCAT was convened by Human Rights Office of Archdiocese. Then in July 2008, the OHCHR organized, along with COPREDEH, a workshop for State institutions, the PDH and several NGOs, where the minimum standards for the NPM were presented, as well as the NPM guidelines from the UN Subcommittee for the Prevention of Torture. In October 2008 a workshop to discuss the contents of an NPM draft law was convened.</p> <p>The group has continued to draft and negotiate a draft NPM law which it hopes to present to Congress in the near future. In July 2009, two members of the UN Subcommittee on Torture Prevention will participate in activities in Guatemala to promote approval of the NPM.</p>
NPM options	<p><u>Existing monitoring mechanisms</u></p> <p>The Ombudsman Office (<i>Procurador de los Derechos Humanos</i>) established a specialized</p>

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Guatemala

Ratification: 9 June 2008 – **NPM designation:** pending

Updated on 10 June 2009

department in 1998 to respond to the constant human rights violations and marginalization of people deprived of liberty. In addition to promotion and advocacy work, they conduct verification visits to detention facilities for both remand and condemned prisoners.

NPM options

Although the draft NPM law has not yet been made public and its contents are still subject to change, the main characteristics may be summarized as follows: a new **National Commission for the Prevention of Torture** would be created, which would be comprised of five independent members and five substitutes. The experts would be nominated by the Human Rights Commission of the Congress based on their merits following an open recruitment process. The Commission would have a Secretariat and the mandate, powers and guarantees foreseen by the OPCAT. It would also convene a civil society **Consultative Council** of five persons with the function to provide advice to the Commission. The role of the Ombudsman Office with relation to this new body is still under negotiation.

Legal framework

[OPCAT Ratification law](#), 5 December 2007

No NPM law adopted yet

Honduras

Ratification: 23 May 2006 - **NPM DESIGNATED: NATIONAL COMMITTEE FOR THE PREVENTION OF TORTURE**

Updated on 01 April 2009

<p>Background information</p>	<p>Population: 7,326,496 Area (sq km): 112,090 Prison population: 11 589 Number of prisons: 24</p> <p>Honduras, one of the least developed and least secure countries in Central America, has been plagued by endemic poverty, military rule and natural disasters. The lack of opportunities, particularly for the youth (half the population is under 19 years-old), account for the emigration of thousands to the United States each year and the emergence of a virulent youth gang culture known as “<i>maras</i>”. These criminal factions dominate the overcrowded, corrupt and violent prison system. Manuel Zelaya of the Liberal Party won the Presidential elections in November 2005 by a narrow margin, promising to crack down on crime by doubling the number of police officers and jailing murderers and rapists for life.</p> <p>The <i>Centro para la Prevención, el Tratamiento y la Rehabilitación de Víctimas de la Tortura</i> (CPTRT), and the Rehabilitation Centre for Victims of Torture (RCT), campaigned actively to ensure OPCAT ratification. In addition to its rehabilitation activities, this national NGO monitors the country’s prisons and police stations, sometimes jointly with public prosecutors, defending individual cases and producing reports on conditions of detention and treatment of detainees. For his part, the National Human Rights Commissioner (<i>Comisionado Nacional de Derechos Humanos</i>) considers the right to life and physical integrity the central axis of his mandate and promoted OPCAT ratification, rendering a formal favourable legal opinion on the matter on 30 July 2003.</p> <p>Honduras signed the OPCAT on 8 December 2004 and, after a suspension of progress during presidential elections, deposited its ratification on 23 May 2006. This ratification, together with Bolivia’s on the same day, led to the OPCAT’s entry-into-force on 22 June 2006.</p> <p>In early 2007, important legislative developments related to persons deprived of liberty occurred: the Congress approved regulations to facilitate the release of prisoners with serious health problems and is debating the new Penitentiary Law, which had been actively promoted by civil society organizations.</p> <p><u>Consideration by international human rights mechanisms</u></p> <p>CAT examined Honduras report in May 2009 CAT report</p>
<p>NPM designation process</p>	<p>As part of its OPCAT advocacy efforts, the CPTRT worked strategically towards opening up the debate on the NPM designation to relevant national actors. On 20 March 2006, the NGO convened, jointly with the Human Rights Department of the Public Prosecutor’s Office (<i>Fiscalía de Derechos Humanos del Ministerio Público</i>), a one-day roundtable to discuss the implications of OPCAT implementation for Honduras.</p> <p>A Task Force, led by the CPTRT and the Prosecutor’s Office, was created to follow-up and a proposal was presented to the executive regarding the establishment of an NPM on a temporary basis until a more permanent body could be instituted by law. This proposal was not approved.</p> <p>For its part, the Human Rights Commissioner (<i>Comisionado Nacional de Derechos Humanos</i>) announced in regional and international forum of Ombudsman that the institution would play a central role in an NPM.</p> <p>The Task Force continued to lobby and work particularly with the Human Rights Commission of the Congress, to lay the ground-work for the NPM, including technical studies on key issues. In parallel, the CPTRT and others included OPCAT in the draft penitentiary law, particularly as regards the obligations of authorities to allow access to prisons.</p> <p>On 14 August 2007, the National Congress adopted a formal measure (<i>moción</i>) recognizing the need for a broad and inclusive process to draft an law for the creation of the NPM and requesting the Human Rights Commission of the Congress to draft such a law Honduras 1, Honduras 2. Following drafting meetings with relevant actors, a draft law for the creation of a new NPM was produced in November 2007 and was debated by the Congress.</p>
<p>NPM options</p>	<p>Initial ideas advanced for the NPM included the designation, by presidential decree, of a provisional “mixed” option with visits by existing institutions, including the Ombudsman Office, NGOs and the Public Prosecutor’s Office with some form of coordination and oversight. This proposal was however</p>

Shaded boxes: States Parties to the OPCAT

Unshaded boxes: States that have signed the OPCAT or are due to sign it in a near future

Honduras

Ratification: 23 May 2006 - **NPM DESIGNATED: NATIONAL COMMITTEE FOR THE PREVENTION OF TORTURE**

Updated on 01 April 2009

	<p>never formalized.</p> <p>On the other hand, the Human Rights Commission of the National Congress drafted an NPM law, which has been adopted by the plenary on 24 September 2008, creating a new National Committee for the Prevention of Torture as NPM.</p> <p>The Committee will be comprised of three experts: one designated by the executive, one by the legislative and one by civil society. The Committee would be assisted by a secretariat. The creation of a Consultative Council – comprised of one representative of the Ombudsman Office, the Public Prosecutor's Office and the Judiciary, and two members of civil society – is also foreseen to assist the work of the Committee.</p>
SPT communications	<p>Official correspondence to the SPT designating the NPM</p> <p>SPT will visit Honduras in 2009.</p>
Legal framework	<p>NPM Law</p>

Mexico

Ratification: 11 April 2005 - **NPM DESIGNATED: National Human Rights Commission**

Updated on 03 December 2008

<p>Background information</p>	<p>Population: 107,449,525 Area (sq km): 1,972,550 Prison population: 214 450 Number of prisons: 457</p> <p>Mexico signed the OPCAT on 23 November 2003 and ratified on 11 April 2005. During the OPCAT negotiations at the UN, Mexico's proposal to include the concept of national preventive mechanisms helped end a critical impasse in the final rounds of negotiations. Ratification was given political weight through a public announcement by then President Fox, who also announced that torture was a problem of the past, causing public outcry. Mexico was the first Chair of the UN Human Rights Council.</p> <p>Mr. Miguel Sarre Iguiniz of Mexico was elected as a member of the UN Subcommittee for the Prevention of Torture on 18 December 2006 for a four-year term.</p> <p>Consideration by international human rights mechanisms:</p> <p>CAT considered the report of Mexico in November 2006 CAT Concluding observations</p> <p>Mexico received the fifth visit of the SPT in 2008. The SPT visit report has not been published yet.</p> <p>Mexico's report will be examined by the UPR in February 2009 National report</p> <p>Federal Structure:</p> <p>Mexico is divided into 32 States (31 States and 1 Federal District)</p>
<p>NPM designation process</p>	<p>A consultation process about the NPM lasting over two years was led by the UN Office of the High Commissioner for Human Rights in Mexico, in collaboration with the Ministry of Foreign Affairs and the APT. Its objective was to inform and discuss amongst relevant actors the implications of OPCAT implementation in the Mexican context and, based on these conclusions, design and negotiate the NPM.</p> <p>Representatives of relevant ministries and public institutions, NGOs, from the hosting state and national entities, as well as guests involved in NPM processes in other countries, participated. Additionally, background papers were produced on the "institutional location", design and the legal framework required for the NPM; 2. Access to the information and 3. Management, use and transfer of individual complaints. The Office of the High Commissioner for Human Rights in Mexico has published a book about the process.</p> <p>Following the change of government and the approaching deadline to have the NPM designated by 22 June 2007, the MFA began a series of closed-door consultations and negotiations with relevant ministries and the National Human Rights Commission (NHRC). This led to the designation, in July 2007, of the NHRC as NPM, through an inter-ministerial agreement. The APT questioned whether the decision had duly taken into account the conclusions of the most lengthy and costly NPM consultation process to date. Civil society organizations and the academic sector strongly publicly questioned the decision and wrote a letter to the Board of the NHRC raising their concerns about designating an existing institution as NPM.</p>
<p>NPM options</p>	<p>Existing monitoring mechanisms</p> <p>The National Human Rights Commission (NHRC) has a program to monitor detention facilities throughout the country. Created in 1992 to appease mounting international criticism of the human rights situation in Mexico, the NHRC is the largest institution of its type in the world, but has been questioned by the human rights community for lack of effectiveness. Each state also has a local human rights commission, with varying degrees of autonomy and impact.</p> <p>The denunciation of torture is a priority issue for many NGOs, some of which conduct monitoring activities, mostly at a local level in the states. The National Human Rights Network "All Rights for All" has begun to systematize its methodology of visits through training and common questionnaires.</p> <p>NPM option</p> <p>Amongst the conclusion of the process, was that the challenges of the NPM were too great to be taken on by a single institution and that a "mixed" mechanism with the involvement of the NHRC, the state human rights commissions and civil society groups would be the most favourable option. A creation of a new body to coordinate actions and act as interlocutor with the SPT was envisaged. The National NGO Network put forth an NPM proposal in this spirit.</p> <p>The option finally adopted by the Mexican government is the designation of a single body as NPM:</p>

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Mexico

Ratification: 11 April 2005 - **NPM DESIGNATED: National Human Rights Commission**

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	<p>the NHRC. The inter-ministerial agreement is interesting as a modality to guarantee the collaboration of relevant ministries in the visits and implementation of recommendations. Nevertheless, some restrictive clauses are cause for concern: the NPM visits can be limited for reasons of public security and national defence, amongst others (when the OPCAT foresees these sorts of restrictions only for SPT visits) and public authorities are to accompany the visit to all the instalment of the facilities and decide on the place for interviews with detainees.</p>
NPM functioning	<p><u>Composition and membership</u></p> <p>Following designation, the NHRC formed an NPM Unit (<i>Dirección General de MNP</i>) within one of the NHRC Departments (<i>3 Visitaduría</i>) comprised of a Director and 13 inter-disciplinary staff, some of whom were formerly involved in prison monitoring within the NHRC.</p> <p><u>Monitoring places of detention</u></p> <p>Starting in September 2007, they conducted their first round of visits to all prisons in Mexico City and in December 2007 visited police stations in the City. In 2008, they began visiting detention facilities in the State of Querétaro. The NPM will then turn to visiting detention facilities in another geographical location and advance state-by-state, as well as following-up on visits already conducted.</p> <p><u>Collaboration with other entities</u></p> <p>In order to guarantee coverage of detention facilities in such a geographically extensive territory, the NHRC asserts to be open to collaboration with human rights commissions in the states, as well as civil society. Nevertheless, the NHRC decided to initiate visits in Mexico City on its own, as a pilot experience as NPM. Other relevant actors in the City were notably unaware that the NHRC had initiated monitoring activities there, contributing little to overcoming initial reservations about the designation. From 11 to 14 March 2008, the NHRC convened a meeting with all state-level human rights commissions to discuss their annual report on prisons, as well as implications of NPM monitoring. The APT has been invited to participate, as well as to accompany a detention visit.</p> <p>According to the NPM website (NPM webpage), the NPM unit has carried out three rounds of visits and is starting to collaborate with both civil society actors and individual human rights commissions in the regional states to be more effective. The NPM had invited a dozen NGOs to form a Consultative Council, but the majority of those convened were reluctant to participate. Nevertheless, the NPM has persisted, convening the NGOs to two meetings to engage in further dialogue. It is still to be defined how the civil society organisations will collaborate with the NPM in practice, but it can hopefully open an opportunity to improve on the persisting tension between this sector and the NHRC</p> <p>Each state also has a local human rights commission, with varying degrees of autonomy and impact. The NHRC intends to establish different memorandums of understanding with the State level human rights commissions to collaborate on visits and follow-up to the latter, as there seems to be an overlap between the existing functions of the State human rights commissions and the NHRC. However, it would appear that that the NHRC does not intend to delegate powers to the local human rights State commissions.</p> <p><u>Subcommittee on Prevention of Torture</u></p> <p>The NHRC has also given attention to its international relations, requesting a formal meeting with the SPT. The meeting took place in Geneva during the SPT November 2007 sessions.</p> <p>The SPT conducted its fifth visit to Mexico in September 2008, which is its first visit to a State Party where there is an established and functioning NPM.</p> <p><u>Other issues</u></p> <p>A national radio and television campaign was initiated during late 2007 to inform the general public about the NHRC's new role as NPM.</p>
SPT communications	<p>Official correspondence to the SPT designating the NPM</p> <p>SPT visit press release</p>
Legal framework	<p>Constitution NHRC</p> <p>Law NHRC</p> <p>The NPM was designated through an inter-ministerial agreement with the NHRC. Article 61 of the</p>

OPCAT Country Status - Americas

Mexico

Ratification: 11 April 2005 - **NPM DESIGNATED: National Human Rights Commission**

Updated on 03 December 2008

[NHRC regulation](#) was also adapted to assume this new function.

NPM reports

[NPM webpage](#) (all the visits reports available)

[NPM annual report](#).(2007)

OPCAT Country Status - Americas

Nicaragua

Ratification: 25 February 2009 – **NPM establishment:** under consideration

Updated on 26 February 2009

<p>Background information</p>	<p>Population: 5,785,846 Area (sq km): 129.494 Prison population: 6 060 Number of prisons: 9</p> <p>On January 2007, Daniel Ortega Saavedra was elected President of Nicaragua. The new government is making efforts to advance the international human rights agenda of the country. However, in its report to the CAT, the Nicaraguan government recognizes that conditions of detentions fall short of international standards: overcrowding; lack of budget allocated to the relevant institutions and their staff; etc. The situation of detention in the country is particularly grave on the Atlantic coast where there are no penitentiary system institutions but rather police cells, in which persons deprived of their liberty live in inhuman conditions.</p> <p>Consideration by international human rights mechanisms: HRC examined Nicaragua report in October 2008 HRC Concluding observations Nicaragua's first periodic report was examined by the CAT on May 2009. CAT report</p>
<p>OPCAT ratification and NPM designation processes</p>	<p>On 31 July 2007, President Ortega sent the OPCAT to the National Assembly for ratification. The Foreign Affairs Commission of the National Assembly was requested an opinion on this issue.</p> <p>In May 2008, the Ministry of Foreign Affairs of Nicaragua, the UN Resident Coordinator Office and the APT convened a half day seminar to promote the ratification of the OPCAT in Nicaragua. The then SPT Vice-Chairperson, participated in the meeting, which gathered representatives from the government, Ombudsman's Office (<i>Procuraduría de Derechos Humanos</i>), and civil society organisations.</p> <p>On 26 August 2008, the Foreign Affairs Commission of the National Assembly approved the ratification of the OPCAT by decree n°5437, which was published in the Official Gazette on 10 September 2008, and the instrument was deposited to the UN on 25 February 2009.</p> <p>According to the written opinion of the Foreign Affairs Commission on the ratification of the OPCAT, the Commission itself carried out some consultations with governmental institutions and non governmental organisations which are directly linked to the administration of persons deprived of their liberty, or working closely with this issue. The Commission consulted for instance the National Police Force, the National Penitentiary System, the Armed Forces, the Ombudsman Office and the Nicaraguan Centre for Human Rights (<i>Centro Nicaragüense de Derechos Humanos CENIDH</i>).</p> <p>All institutions and organisations consulted agreed on the necessity of ratifying the instrument</p>
<p>NPM options</p>	<p>Although the APT is not aware of any formal NPM proposal, a number of indications suggest that the Ombudsman's Office may be designated as NPM.</p> <p>During its visit to Nicaragua, the APT was informed that the Ombudsman's Office was willing to assume the NPM mandate, and has made such a request to the President of the Republic.</p> <p>Additionally, the Foreign Affairs Commission of the National Assembly, in its written opinion, stated that the designation of National Preventive Mechanisms under the OPCAT would not represent any additional costs for the State, as the NPM would work on a collegial and inter-institutional basis, with the collaboration of independent human rights organisations.</p> <p>Furthermore, in its report to the CAT to be examined in May 2009, Nicaragua informed the following: "Accession to the Protocol does not entail any legal reforms as the Office of the Human Rights Procurator (PDDH), as an independent body for the protection of human rights, inspects and defends, through the Procurator for Prisons, compliance with the rights and liberties inherent in the nature and dignity of detainees, convicted persons and persons awaiting trial, including visits to and inspections of detention centres. Consequently, the signature and ratification by Nicaragua of the Protocol is likely to strengthen inspection of compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment."</p>
<p>Legal framework</p>	<p>OPCAT Ratification decree n°5437.</p>

Paraguay

Ratification: 2 December 2005 - **NPM establishment:** pending (due to have taken place before 22 June 2007)

Updated on 22 December 2008

<p>Background information</p>	<p>Population: 6,506,464 Area (sq km): 406,750 Prison population: 6000³ Number of prisons: 16² Psychiatric institutions: 1 Military detention facilities: 40</p> <p>Paraguay, the only officially bilingual country in South America (Spanish and Guaraní), is a country punished by wars and largely ignored by international public opinion. The country was ruled by the military dictatorship of Alfredo Stroessner for over thirty years (1954-1989), the longest in South America. The transition to democracy has been overshadowed by political instability and the hegemony of the <i>Colorado</i> political party. The human rights policies advanced by democratic governments have been characterized by an attempt to break with the legacy of the past, including profound constitutional, legislative and institutional reforms and the creation of a Truth and Justice Commission.</p> <p>Despite this remarkable formal progress, widespread poverty, corruption and abuse persist. In its concluding observations on Paraguay's second periodic report, the UN Committee on Human Rights noted concern about the excessive use of force by security forces and prison staff, continuing allegations of torture without prosecutions, the recruitment of children for military service and overcrowding and unsatisfactory conditions in prisons. The UN Special Rapporteur on Torture, Manfred Nowak, visited the country in November 2006, concluding that prisons are extremely overcrowded and that torture is still common during the first days of police custody. President Nicanor Duarte, who took office in April 2003, has been described as a populist grass-roots politician who has had to confront a rising crime rate and increased number of landless families. Presidential elections are scheduled to take place on 20 April 2008.</p> <p>Paraguay has three inter-institutional commissions that conduct visits to places of detention: one for military barracks, one for detention centres for minors and one for adult prisons. At least the last two commissions publish yearly reports with recommendations based on their visits to all prisons throughout the country. These commissions count on the active participation of NGOs, members of parliament and representatives of some ministries, amongst other relevant actors. Through their work, the commissions have progressively increased awareness about the problems of persons deprived of liberty and gained legitimacy as interlocutors for helping to find solutions.</p> <p>Over twenty human rights NGOs have grouped together under an active and professional network (CODEHUPY) which deals with issues of torture and ill-treatment of both the past and the present, including through the publication of an annual report. Although human rights organizations advocated actively for the establishment of an Ombudsman Office (<i>Defensoría del Pueblo</i>), they have been vocally disappointed with the officeholder since the institution was created in 2001. The institution conducts visits to places of detention independently and as part of the inter-institutional commissions described above.</p> <p>Paraguay signed the OPCAT on 22 November 2004 and ratified the instrument on 2 December 2005, following an advocacy visit by the APT in June 2005 and in line with its policy of ratifying all major international human rights instruments.</p> <p><u>Consideration by international human rights mechanisms</u></p> <p>CAT considered Paraguay in 2000 CAT Concluding observations.</p> <p>The UN Special Rapporteur on Torture, Manfred Nowak, visited Paraguay in November 2007 Report Special Rapporteur Paraguay</p> <p>Paraguay will receive the sixth visit of the SPT in March 2009:</p>
<p>NPM designation process</p>	<p>The Ministry of Foreign Affairs, the NGO Network CODEHUPY and the APT co-organized a National Forum to analyze the OPCAT in the Paraguayan context and to identify the necessary steps for designating a comprehensive national preventive system. The meeting took place on 23 and 24 November 2006, in parallel to an official visit by UN Special Rapporteur on Torture, Manfred</p>

³ & ² La comisión interinstitucional de visita y monitoreo a centros de reclusión de adolescentes en Paraguay: "2001-2005, abogacía para un mejoramiento de las condiciones de reclusión de los adolescentes".

Paraguay

Ratification: 2 December 2005 - **NPM establishment:** pending (due to have taken place before 22 June 2007)

Updated on 22 December 2008

	<p>Nowak.</p> <p>Participants of the meeting elected by consensus a Working Group of 13 people from state institutions and civil society to draft an NPM proposal. In order to further guarantee the state and civil society balance, the NGO Network CODEHUPY acted as secretariat and the Group met initially in the Ministry of Foreign Affairs and then in the Senate. The group established an intensive working dynamic, meeting weekly during a 6-month period and all decisions about the NPM structure were taken by consensus. The Group, which received particular support from the Human Rights Commission of the Senate, produced a draft law to create an autonomous body as NPM.</p> <p>The draft law was made public and circulated to international and national human rights experts for comments. In May 2007, CODEHUPY and APT convened a meeting between the Group, two members of the SPT and other international experts to comment on the draft. A Second National Forum was convened on 22 June 2007 in order for the Group to present its outcome to the same platform which had created the Group and entrusted it with the task of drafting the NPM.</p> <p>In May 2007, the First Regional Seminar on OPCAT implementation was held in Asuncion, Paraguay, hosted by the Ministry of Foreign Affairs and the APT, in the framework of the Meeting of High-level Authorities of MERCOSUR. (Mercosur 1, Mercosur 2, Mercosur 3). Government delegates of ten MERCOSUR members and associated States participated, as well as national NGOs, international experts and, notably, the three members of the SPT. The Seminar recommendations include that NPM designation processes should be inclusive, transparent and participatory, in ample dialogue between state authorities and civil society in order to help guarantee the effectiveness and legitimacy of future NPMs.</p> <p>Then, on 26 June 2007, International Day in Support of Victims of Torture, the draft law was presented to Congress for approval. It is currently under consideration by the Senate: Due to the presidential and legislative elections which took place in 2008, no progress has been made regarding the NPM law. However, during its visit to Paraguay in December 2008, the APT was informed that on 3 December 2008, the Human Rights Commission of the Senate approved the NPM law, with some minor amendments. The draft law remains under consideration by the Legislation and Budget Commissions of the Senate, before its presentation to the plenary. Adoption by the higher chamber might occur in early 2009. In December 2008, the APT visited Paraguay, and invited two members of the Subcommittee on Prevention of Torture (SPT) to participate in public activities on OPCAT and the APT took this opportunity to promote the adoption of the NPM law.</p> <p>While the APT was in Paraguay, the Working Group which drafted the NPM law decided to meet in December 2008, in order to establish a strategy for the adoption of the NPM law, and the effective establishment of the NPM. The Working Group members also plan to involve the members of the inter-institutional commissions which visit places of detention and other relevant organisations from the civil society organisations in this NPM strategy.</p> <p>The NPM designation process in Paraguay is considered a model of good practice worldwide.</p>
NPM options	<p>The Working Group came up with a draft law which envisages the establishment of a National Committee for Prevention of Torture, composed by 10 members. They will be nominated by four electoral colleges of the: legislative, executive, judiciary and civil society. Other innovative aspects of the law include the possibility of the Committee to draw on the expertise of outside members, including from civil society, to accompany visits and have a voice in decision-making. In addition to the minimum faculties foreseen under the OPCAT, the Committee will be able to call ethical-political trials.</p> <p>Some of the provisions of the draft NPM law were amended, including the possibility of an appeal for the ethical-political trials; the need to have an academic backgrounds to be NPM members; and the amount of the salary for the NPM members. The Budget Commission from the Senate also requested an estimation of the future NPM budget, in order to approve the NPM draft law.</p>
Legal framework	NPM draft law.

Peru

Ratification: 14 September 2006 - **NPM establishment:** pending (should have been designated by 14 October 2007)

Updated on 22 December 2008

<p>Background information</p>	<p>Population: 28,302,603 Area (sq km): 1,285,220 Prison population: 35,642 Number of prisons: 82</p> <p>A country of great natural resources and rich cultural heritage, Peru is also deeply divided socially and economically: a small elite of Spanish descent control most wealth and power, while the excluded indigenous population live largely in poverty. During most of the 1980s and 1990s, the country underwent a grave internal armed conflict between the Peruvian State and two armed opposition groups (Shining Path and Tupac Amaru). President Alberto Fujimori (1990 – 2000) responded with a strong authoritarian hand, dissolving most democratic institutions with the support of the military.</p> <p>A Truth and Reconciliation Commission was established in 2001 to investigate widespread violations perpetrated largely against indigenous and rural communities during this period. Its findings included disappearances, extrajudicial executions, violations of due process and acts of torture and ill-treatment committed by State officials, as well as killings and physical attacks by rebel groups. Fujimori fled the country in 2000, opening the way for a transition marked by the unpopular and failed economic and social programmes of Alejandro Toledo. This led the way for the political comeback of Alan García, who took office in July 2006, 16 years after his previous term of government was mired by hyperinflation and violence. In October 2007, Fujimori was extradited from Chile on charges of corruption and human rights violations.</p> <p>The <i>Defensoría del Pueblo</i> (Ombudsman Office) was established in 1993 under the Constitution to promote and protect the rights of people and communities and to supervise the public administration. The <i>Defensoría</i> was one of the democratic strong-holds during the Fujimori years. The <i>Defensoría</i> has two separate programmes to promote and protect the rights of persons deprived of liberty and to supervise their detention: one for police custody and another for penitentiaries. Peru also has a vibrant and organized human rights community which has come together under one of the most effective human rights NGO networks in Latin America: the <i>Coordinadora Peruana de Derechos Humanos</i>.</p> <p><u>Consideration by international human rights mechanisms</u></p> <p>CAT considered Peru in May 2006 CAT Concluding observations</p> <p>Peru report was considered by the HRC in the framework of the UPR in May 2008 Report of the Working Group</p>
<p>NPM designation process</p>	<p>In 2006, nine human rights organizations belonging to National NGO Network formed a Group against Torture to, amongst other objectives, promote OPCAT ratification and implementation. Together they debated possible NPM options, notably focusing on the viability of possible options in the political context. They finally proposed the designation of the Ombudsman Office with some level of NGO participation. On 26 June 2007, International Day in Support of Victims of Torture, the NGOs launched a national campaign to promote their NPM proposal which includes gathering signatures, public promotion and lobbying.</p> <p>The Ombudsman Office would in principle agree to the designation. The institution has been notably uninvolved in the NPM discussions, not promoting its own designation. The Ombudsman Office is very vigilant of its autonomy, both with respect to the state and civil society.</p> <p>In this context, the APT organized a high-level mission of experts to visit Lima, Peru in September 2007 with the objective of advising and promoting the NPM designation process. Notably, the APT delegates were accompanied by two members of the SPT. Activities during the mission included an audience with the plenary of the National Human Rights Council, a meeting with high-level authorities, a public conference at the <i>Colegio de Abogados</i> (Bar Association) and interviews with NGOs and government representatives. They also met with the Ombudsman Office to discuss possible adjustment to their mandate and practice should they be designated NPM.</p> <p>During the APT visit, a second NPM proposal was made public by the Executive Secretary of the National Human Rights Council to designate this body as the NPM, in parallel to the Ombudsman Office designation. The proposal had not been previously circulated to the members of the Council, causing some disquiet regarding the process. The <i>Consejo de Ministros</i> (Council of Ministers) will be considering NPM proposals within the coming weeks in order to come to a decision on formal</p>

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OPCAT Country Status - Americas

<p><u>Peru</u></p> <p>Ratification: 14 September 2006 - NPM establishment: pending (should have been designated by 14 October 2007)</p> <p style="text-align: right;"><i>Updated on 22 December 2008</i></p>	
	<p>designation.</p> <p>In May 2008, on the occasion of the examination of its report by the UPR, Peru stated that “<i>consultations are ongoing to find the most appropriate way to do this in the short term.</i>”</p> <p>In September 2008, the APT participated in a one-day seminar on torture issues, co-organized by the National NGOs Network, REDRESS, the Medical Association of Peru and the Forensic Anthropology Team of Peru. The APT took the opportunity of its presence in the country to discuss the various NPM options.</p>
NPM options	<p><u>Existing monitoring bodies</u></p> <p>The Ombudsman (<i>Defensoría del Pueblo</i>) has a long experience in monitoring places of detention in the country, and has various regional offices throughout the country.</p> <p><u>NPM options</u></p> <p>In 2007, the NGO Working Group against Torture drafted a proposal to designate the <i>Defensoría del Pueblo</i> (Ombudsman Office) as the NPM. Unusually, in Peru, NGOs proposed the designation of the Ombudsman Office as NPM due to its high level of legitimacy. Additionally, they proposed some level of involvement of NGOs.</p> <p>Back in 2007, the second proposal was to designate the <i>Consejo Nacional de Derechos Humanos</i> (National Council of Human Rights) as NPM alongside the Ombudsman Office. The National Council is an inter-ministerial body in charge of promoting human rights policies and is coordinated by the Ministry of Justice. The Ombudsman Office and several civil society organizations, including the National NGO Network, have observer status before the National Council. The international delegation which visited Peru in September 2007 expressed its concerns about the independence of an NPM comprised of members of the executive, suggesting that the National Council could have an active role in the implementation of recommendations on torture prevention recommended by the NPM.</p>
Legal framework	<p>Draft NGOs proposal for the NPM establishment.</p> <p>Ombudsman's legal framework</p>

Uruguay

Ratification: 8 December 2005 - **NPM DESIGNATED: NATIONAL HUMAN RIGHTS INSTITUTION**

Updated on 4 March 2009

<p>Background information</p>	<p>Population: 3,431,932 Area (sq km): 176,220 Prison population: 6947 Number of prisons: 24</p> <p>Uruguay had been dominated by a two-party system for over 180 years until the historic election of Tabare Vazquez, of the Broad Front coalition, in March 2005. Amongst the most pressing issues on the human rights agenda of the current administration are allowing excavations of the remains of persons disappeared during the military regime and responding to the crisis in prisons. Prisons in Uruguay, which still depend on the Ministry of Interior, are severely overcrowded and deficient, leading the current government to declare a “humanitarian emergency” in prisons. Nevertheless, public anxiety about insecurity has somewhat tied the hands of authorities in ambitious plans to liberate prisoners.</p> <p>Unlike most traditional human rights organizations in the region, which focus principally on gross violations during the military regimes, the leading human rights NGOs in Uruguay, notably IELSUR and SERPAJ, have made monitoring prison conditions, for adults and adolescents, an institutional priority for nearly two decades, including the publication of yearly reports. Nevertheless, in recent years this capacity has been largely debilitated by resource limitations.</p> <p>NGOs also promoted the establishment of three inter-institutional Working Groups to monitor places of detention with active parliamentary involvement: <i>Grupo de Trabajo sobre el Sistema Carcelario Nacional</i> August (1990 – 2000); <i>Comisión Honoraria para el Mejoramiento de la Situación Carcelaria</i> (1996); <i>Grupo Tripartito de Trabajo para el Mejoramiento del Sistema Carcelario</i> (March 2002 - 2004).</p> <p>The practice of parliamentary involvement in monitoring was formalized through the creation of a Parliamentary Commissioner for Prisons (<i>Comisionado Parlamentario</i>) in August 2003; the first Commissioner, Mr. Alvaro Garce, was named on 13 July 2005 for a five-year mandate. The functions include information-gathering on prison conditions, receiving individual complaints and the transmission of recommendations to competent authorities. He currently has a ten-person interdisciplinary staff and published his first public report in December 2006. Although his mandate covers all persons deprived of liberty under criminal procedures, he has limited his work to adults.</p> <p><u>Consideration by international human rights mechanisms</u></p> <p>Mr. Wilder Tayler was elected as SPT member on 18 December 2006 for a four-year term.</p> <p>Uruguay’s report was examined by the UPR in May 2009 National report</p>
<p>NPM designation process</p>	<p>During the OPCAT ratification process, relevant ministries and parliamentarians indicated that the Parliamentary Commissioner would fulfil the requirements of the NPM. Nevertheless, no formal technical analysis of the mandate in light of OPCAT obligations was conducted. During the ratification process, NGOs (particularly SERPAJ and IELSUR) advocated for some level of civil society involvement in the NPM.</p> <p>On 21 and 22 November 2006, the Ministry of Foreign Affairs and the APT organized a national forum to advance debate on OPCAT implementation and bring relevant actors to the negotiating table. As a result of this event, a smaller inter-ministerial meeting was convened 19 January 2006, where a decision was taken to create a Working Group by presidential decree to define the NPM. Although the decision was never formalized, the Human Rights Department of the Ministry of Education and Culture has convened several meetings to discuss possible NPM proposals. Members of the three branches of the state (including the Parliamentary Commissioner) and civil society have participated. Nevertheless, due to lack of consensus amongst relevant actors, as well as other pending human rights priorities, the process stalled for a few months.</p>
<p>NPM options</p>	<p><u>Existing monitoring bodies</u></p> <p>Some institutions are already monitoring places of detention in Uruguay, including the Parliamentary Commissioner for Prisons and NGOs.</p> <p><u>NPM options</u></p> <p>Designating the Parliamentary Commissioner was one of the envisaged options by the government, and expressed in the official correspondence sent to the SPT back in November 2008. Designating the Parliamentary Commissioner for Prisons would have entailed some adjustments to the mandate of the Commissioner and raised questions about the functional independence of a body which</p>

Uruguay

Ratification: 8 December 2005 - **NPM DESIGNATED: NATIONAL HUMAN RIGHTS INSTITUTION**

Updated on 4 March 2009

depends directly on the Parliament.

In December 2008, a law creating a **National Human Rights Institution** was adopted by the Congress and published in the Official Gazette on 27 January 2009. Uruguay was one of the few countries of Latin America that did not have any National Human Rights Institution. The NHRI law foresees an autonomous five-person commission to be designated by the parliament with a mandate of advancing human rights policy and channelling denunciations. In its article 83, the law provides for the designation of the **National Human Rights Institution as the NPM**, in collaboration with the Ministry of Foreign Affairs.

It is expected that the NHRI would be established and functioning in 2010.

SPT communications

[Official correspondence to the SPT](#) on the NPM designation (20 November 2008)

Legal framework

[Uruguay: NHRI Law](#)

OPCAT Country Status

Asia-Pacific

Australia

OPCAT signature: 19 May 2009 – OPCAT Ratification: expected in 2010

Updated on 20 May 2009

<p>Background information</p>	<p>Population: 21.02 million Area (sq km): 7.686.850 km² Prison population: 27,224 Number of prisons: 124</p> <p>Consideration by international human rights mechanisms:</p> <p>HRC considered the report of Australia in March 2009 HRC Concluding observations</p> <p>CAT considered the report of Australia in May 2008 CAT Concluding observations</p> <p>Federal Structure:</p> <p>Australia is divided into six States and two mainland Territories.</p>
<p>OPCAT ratification and NPM designation processes</p>	<p>In March 2004, the Joint Standing Committee on Treaties (JSCOT) of the Parliament of Australia issued a report following its inquiry on the appropriateness of Australia becoming party to the OPCAT. Back then, although 17 of the 20 submissions urged Australia to join the OPCAT, the JSCOT concluded, by a 9-7 majority that there was “no immediate need” for Australia to ratify the OPCAT. Both procedural and substantive reasons were invoked in support of this decision. Among other things, the then government of Australia (GoA) objected to the fact that the final draft of what came to be known as the OPCAT had not been adopted by consensus within the UN. Secondly, the GoA only agreed to visits by UN treaty committees where they saw a “compelling reason” for those bodies to want to visit Australia. In their eyes, ratifying the OPCAT would have constituted a standing invitation for the Subcommittee to visit all Australian places of detention at any time.</p> <p>However, circumstances have changed since the change of government following the November 2007 federal election. The renewed interest in the OPCAT shown by the new government was met with satisfaction by the CAT when it examined Australia’s periodic report in May 2008. In its recommendations, the CAT “<i>note[d] with appreciation the State Party’s commitment to become a party to the Optional Protocol to the Convention</i>”, and also encouraged Australia to speedily conclude its internal consultation in order to ratify as soon as possible. The APT was informed that the consultation process – which takes the form of a “National Interest Analysis (NIA) – was formally initiated in May 2008 when the Attorneys-General’s Department invited all possible stakeholders to share their views on whether or not Australia should accede to the OPCAT. Several institutions have made submissions, including the Australian Human Rights Commission which published its submission in December 2008, which was written by Prof. Richard Harding and Prof. Neil Morgan.</p> <p>In its report, the Australian Human Rights Commission recommends that the process of OPCAT implementation should include civil society organisations. The AHRC estimated that the national consultations on the OPCAT should be completed by 2009 and the “<i>principles governing Australia’s NPM system to be finalised</i>”. In addition, Australia should consider ratifying the OPCAT in the second quarter of 2010 without any declaration if practical implementation within the one-year deadline is feasible. If not, the AHRC recommends the use of a declaration under the Article 24 to postpone its obligation to establish a NPM within a year. In addition, the AHRC recommends that a “<i>comprehensive Commonwealth statute should be enacted to enshrine OPCAT and to set out the processes through which it will be implemented across Australia. Complementary State and Territory legislation should follow.</i>”</p> <p>On 19 May 2009, Australia signed the OPCAT, becoming the second additional State Signatory of the OPCAT in the Asia-Pacific region.</p>
<p>NPM options</p>	<p>Existing monitoring mechanisms</p> <p>The NIA submissions available thus far recognize that the structure and functions of existing visiting agencies may well need to be reviewed in order for them to comply with OPCAT requirement for National Preventive Mechanisms. Some of those oversight bodies appear to be more compliant than others. Thus, while the Victoria Office of Correctional Services Review would probably need to make significant adjustments to its mandate if it wants to be part of the NPM, the Inspector of Custodial Services in Western Australia appears to conform with most requirements of the OPCAT. Interveners in the NIA highlight in their reports the need to carry out an extensive assessment of existing mechanisms before designating an NPM.</p>

Shaded boxes: States Parties to the OPCAT

Unshaded boxes: States that have signed the OPCAT or are due to sign it in a near future

Australia

OPCAT signature: 19 May 2009 – OPCAT Ratification: expected in 2010

Updated on 20 May 2009

	<p><u>Proposed NPM options</u></p> <p>The federal nature of the Australian political system makes it highly unlikely that a single unitary mechanism be designated as a nationwide NPM. In Australia, the responsibility for particular categories of detainees and places of detention is shared between the federal and state-level jurisdictions. This has implications on the capacity of visiting bodies to enter specific places or interview specific detainees. For example, while the general responsibility for prisons lies on the States, immigration detention facilities fall within the federal jurisdiction.</p> <p>The New Zealand NPM – made up of 5 components with the New Zealand Human Rights Commission playing a coordinating role and liaising with the UN Subcommittee – has been referred to as an interesting source of inspiration for Australia. In its submission, the AHRC recommends that Australia should adopt a “mixed option” for its NPM, in which is “shared between the States, the Territories and the Commonwealth, but there must be (i) a national coordinating NPM and (ii) a single coordinating agency within each State and Territory.” Similarly to other organisations which have participated in the NIA, the AHRC report foresees that the Australian Human Rights Commission would be best placed to take on the coordinating role. In that context, the AHRC recommends that the AHRC Act and the internal organisation arrangements should be “<i>reviewed to ascertain whether additional statutory powers are required and to establish an OPCAT commissionership</i>”. In addition, relevant “<i>resource needs should be scoped and provision made for providing them</i>”. Similar approaches should therefore be adopted if the Ombudsman was to take on the coordinating role at the national level. Finally, the report concludes that the Western Australian Office of the Inspector of Custodial Services should be used as a “<i>template for the powers of the State, Territory and national NPMs</i>”</p>
<p>Legal framework</p>	<p><i>No NPM establishment law has been adopted yet.</i></p> <p><u>Western Australia Custodial Inspector Act (2003)</u></p>

Cambodia**Ratification:** 29 March 2007 - **NPM establishment:** due to have taken place before 29 March 2008

Updated on 23 April 2009

Background information	<p>Population: 13,881,427 Area (sq km): 181,040 Prison population: 8160 Number of prisons: 27</p> <p>Prison conditions remain harsh, and government efforts to improve them continue to be hampered by a lack of funds and weak enforcement. Human rights organizations cite a number of serious problems, including overcrowding, medical and sanitation problems, food and water shortages, malnutrition, and poor security.</p> <p>The US State Department reports that as of 2005, the government generally allowed international and domestic human rights groups to visit prisons and provide human rights training to prison guards. However, NGOs reported that at times cooperation from local authorities was limited. For example, human rights NGOs were not given access to investigate an incident surrounding an attempted escape in March at the Trapoeung Phlon Prison until five months after it occurred. The Ministry of Interior continued to require that lawyers, human rights monitors, and other visitors obtain permission prior to visiting prisoners. The Ministry withheld such permission in some politically sensitive cases. NGOs were not allowed to interview prisoners in private. Nevertheless, several Cambodian NGOs monitor most of the prisons.</p> <p>The General Commissariat of the National Police, which is under the supervision of the Ministry of the Interior, manages all civilian police units. The police forces are divided into those who have the authority to make arrests, those who do not have such authority, and the judicial police. Military police are permitted to arrest civilians only when authorized by local governments. The law prohibits torture and physical abuse of prisoners; however, beatings and other forms of physical mistreatment of prisoners continue to be reported, including that military and civilian police officials use physical and psychological torture and severely beat criminal detainees, particularly during interrogation.</p> <p><u>Consideration by international human rights mechanisms</u></p> <p>CAT considered Cambodia in 2003 CAT concluding observations and published its list of issues in April 2008 CAT List of issues April 08</p> <p>Cambodia's report will be examined by the UPR in November 2009</p>
NPM designation process	<p>In 2003, the CAT suggested Cambodia to “<i>take urgent measures to improve conditions of detention in police stations and prisons. It should, moreover, increase its effort to remedy prisons overcrowding and establish a systematic and independent system to monitor the treatment in practice of persons arrested, detained or imprisoned. In this connection, the State party should consider signing and ratifying the Optional Protocol to the Convention</i>”. Cambodia ratified the OPCAT on 29 March 2007, and the external oversight of places of detention is still an issue of concern for the CAT. In its list of issues published in April 2008, the CAT requested the following information: “<i>What steps has the State Party taken to ensure that the supervision of prisons and police stations is conducted effectively and independently? Are places of detention periodically visited? By whom? How is the situation monitored and how has the Government addressed shortcomings?</i>”</p> <p>The Ministry of Foreign Affairs and International Cooperation of Cambodia reportedly consulted the relevant governmental agencies to decide upon the most appropriate NPM. As a result of the consultations, the Ministry of Interior proposed the creation of a NPM through a sub-decree, which has been submitted for discussions among relevant governmental actors.</p> <p>In June 2008, the APT visited Cambodia to inquire about OPCAT implementation in the country, and more particularly regarding the designation and establishment of a National Preventive Mechanism. The Ministry of Interior is the lead agency on the NPM and negotiations are ongoing to designate the NPM. In addition, as in other national contexts, there exists an on-going discussion on the establishment of a NHRI in the country, which is perceived by many NGOs actors to be the opportunity to assume the NPM mandate. A NGO Working Group on the creation of an NHRI was mandated to work on a draft NHRI law, which has not been yet finalized.</p> <p>In January 2009, the Ministry of Interior of Cambodia convened a workshop on the implementation of the OPCAT, supported by the OHCHR Office in Cambodia and the Danish NGO RCT. The SPT Vice-Chairperson Hans Draminsky also participated in the seminar. The participants of the seminar discussed and revised the draft sub-decree, and explore possible ways of implementation of the OPCAT at the national level.</p>

Shaded boxes: States Parties to the OPCAT**Unshaded boxes:** States that have signed the OPCAT or are due to sign it in a near future

CambodiaRatification: 29 March 2007 - **NPM establishment:** due to have taken place before 29 March 2008

Updated on 23 April 2009

NPM options	<p><u>Existing monitoring bodies</u></p> <p>The Cambodian Human Rights League (better know as LICADHO) and some other NGOS conduct visits to prisons. However, there is no legal basis for such independent monitoring scheme. Basically, NGOs are allowed to enter in prisons if the officer in charge agrees to it and if those NGOs provide some services in exchange. Visiting teams are in general not allowed to speak in private with detainees. However, no other type of detention facility is subject to visits by independent experts, which is highly problematic.</p> <p><u>NPM options</u></p> <p>The option proposed by the governmental agencies envisages the creation of a structure by a sub-decree, composed by different agencies, including the Ministry of Interior, the Ministry of National Defense, the Ministry of Foreign Affairs and International Cooperation, the Ministry of Justice, the Ministry of Health, the Ministry of Social Affairs, Veteran and Youth Rehabilitation, including the Cambodian Human Rights Committee. The consideration of the draft proposal has been delayed due to the July 2008 elections, and was discussed among relevant institutions at the Council of Prime Minister's Office in the beginning of 2009.</p> <p>After having examined the provisions of the OPCAT and more particularly the concepts of independence of the NPM during the January 2009 consultations, the Ministry of Interior and the OHCHR Office in Cambodia informed that "<i>It was also understood that the current draft sub-decree will create a "Temporary body towards the establishment the NPM" and that this NPM would be based on a law that would be developed by the Government over a period of time, possibly two years.</i>" Press Release</p>
SPT communications	<p>Official correspondence to the SPT on the designation of the NPM (12 January 2009)</p> <p>SPT will visit Cambodia in 2009.</p>
Legal framework	<p><i>No NPM establishment law adopted yet</i></p>

Maldives

Ratification: 15 February 2006 - **NPM DESIGNATED: HUMAN RIGHTS COMMISSION OF THE MALDIVES**

Updated on 01 April 2009

Background information	<p>Population: 359,008 Area (sq km): 300 Prison population: 1125⁴ Number of prisons: 9</p> <p>The 287-officer Maldives Police Service, which until September 2004 functioned as a subset of the National Security Service (NSS), investigates crimes, collect intelligence, make arrests, and enforce house arrest. Although the NSS is primarily responsible for external security, it also retains a role in internal security. The director of the NSS reports to the minister of defence. After a visit in 2004, Amnesty International while commending the government for the separation of the police from the National Security Service noted that ill-treatment of detainees continued, particularly by the National Security Service.</p> <p>Since 2005, the government has allowed prison visits by foreign diplomats, the ICRC, and the Human Rights Commission of the Maldives (HRCM).</p> <p><u>Consideration by international human rights mechanisms</u></p> <p>The Maldives was the second country to welcome a delegation of the SPT in December 2007 for a country visit, and the report was made public</p>
NPM designation process	<p>In April 2007, the APT organised a workshop on the prevention of torture and ill-treatment in the Maldives through the implementation of the UNCAT and its Optional Protocol. It brought together representatives from various government agencies, the Human Rights Commission of the Maldives (HRCM) and NGOs. While refraining from endorsing one implementing model or another, the APT agreed to share with relevant authorities its appreciation of the changes that would be required in order for the HRCM to be designated as NPMs.</p> <p>In a press release dated 7 December 2007, the Ministry for Foreign Affairs announced that the HRCM had been officially designated as NPM.</p>
NPM options	<p>Although no legislative were made to the founding law of the Human Rights Commission of the Maldives following its designation as NPM, steps have been taken to increase its effectiveness: a Protection Unit was created in November 2007, and a Head of Unit was appointed shortly thereafter.</p>
NPM functioning	<p><u>Composition</u></p> <p>As of March 2009, the HRCM assigned 4 staff (2 male and 2 female) to the NPM work, including a Secretary and three Inspections Officers. None of them have a legal or medical background. The NPM head's position will be filled in, in the coming months.</p> <p><u>Internal organisation</u></p> <p>Following a workshop facilitated in January 2009 by the APT and TC Team Consult, the HRCM staff and Commissioners drafted and adopted the NPM action plan for 2009-2010, comprising 7 strategic objectives. Since that date, the NPM staff started to implement the action plan in order to fully assume its NPM mandate.</p>
SPT Communications	<p>Official correspondence to the SPT designating the NPM</p> <p>SPT report to the Maldives (2007)</p>
Legal framework	<p>HRCM Act</p> <p>No legislative measure has been taken to ensure full compliance of the HRCM Act with the requirements of the OPCAT for NPMs. The Government of the Maldives hopes to be able to introduce such amendments in Parliament after the new Constitution is enacted and the multi-party elections are held. This is likely to take several months.</p>

⁴ Includes sentenced prisoners only.

New Zealand

Ratification: 14 March 2007 - **NPM DESIGNATED (several: 5 different bodies coordinated by the Human Rights Commission)**

Updated on 17 February 2009

<p>Background information</p>	<p>Population: 4,076,140 Area (sq km): 268,680 Prison population: 8,372 Number of prisons: 19</p> <p>The police commissioner, appointed by the governor general, is the chief executive of the police force and reports to the minister of police. A board of commissioners, consisting of the commissioner and two deputy commissioners, is responsible for high-level leadership and makes decisions on police strategy, governance, and performance management. The police are organized into 12 districts. There are three operational branches: general duties, criminal investigation, and traffic safety. Allegations of corruption or impunity are referred to the Independent Police Complaints Authority, which can refer cases directly to Parliament.</p> <p>Prison overcrowding remains a problem. In June 2004 Parliament passed a new Corrections Act, which came into force in June 2005. The objectives of the act were to eliminate private management of prisons, establish individual management plans for prisoners, and make prisoners' minimum entitlements more consistent with UN standards. The government permits visits by human rights observers.</p> <p>While discrimination is prohibited by law, Maori, Moriori and Pacific Islanders face a variety of social and economic challenges, and make up a percentage of the prison population disproportionate to their percentage in the population. For instance, approximately 15 percent of New Zealand's population claim at least 1 ancestor from the country's indigenous Maori or Moriori minorities. However, Maori constitute half the prison population.</p> <p><u>Consideration by international human rights mechanisms</u></p> <p>New Zealand report was considered by CAT in May 2009 CAT report</p> <p>New Zealand report will be considered by HRC in October 2009</p>
<p>NPM designation process</p>	<p>In May 2006, the APT provided written submissions to the Committee on Foreign Affairs, Defence and Trade of the New Zealand Parliament in which it raised a number of specific concerns with respect to some aspects of the proposed legislation to implement the NPM scheme.</p> <p>In June 2007, the Minister of Justice formally designated five oversight institutions as New Zealand NPMs, with the Human Right Commission playing a coordinating role. In that same month, the NPMs held their first of a series of meetings meant to develop a systematic and co-ordinated approach to their roles and working methods.</p>
<p>NPM options</p>	<p>New Zealand has decided to implement the OPCAT by designating five existing mechanisms as NPM, though the implementing legislation also allows for the establishment of new mechanisms, with the appointment of a central NPM to coordinate the activities of the NPMs and liaise with the SPT.</p> <p>Parliament considered it most appropriate to enact the OPCAT legislation in the form of amendments to the Crimes of Torture Act 1989, which had been adopted to give effect to New Zealand's obligations under the Convention against Torture (together with consequential amendments to the constituent legislation of some of the existing mechanisms).</p> <p>The legislation describes the functions and powers of NPMs.</p> <ol style="list-style-type: none"> 1) The Human Rights Commission (HRC) will act as the <u>central national preventive mechanism</u>. In this capacity, it liaises with the UN SPT, coordinates all NPM activities and identifies cross-cutting issues. 2) The Office of the Ombudsmen (Ombudsmen Act 1975) visits prisons, immigration detention facilities, health and disability places of detention, and youth justice residences. 3) The Independent Police Conduct Authority; is a civilian oversight body. The mandate of the PCA was extended by the Crime of Torture Amendment Bill to enable it to monitor the treatment of persons in the custody of the police, in addition to its existing complaints and investigations role. The Authority's membership and investigative capacity have also increased during the year. It has now 5 members on his board.

New Zealand

Ratification: 14 March 2007 - **NPM DESIGNATED (several: 5 different bodies coordinated by the Human Rights Commission)**

Updated on 17 February 2009

	<p>4) The Office of the Children's Commissioner; shall monitor all places where minors are kept in juvenile detention facilities.</p> <p>5) The Inspector of Defence Force Service Penal Establishments of the Office of the Judge Advocate General of the Armed Forces (visiting officers appointed in accordance with relevant Defence Force Orders issued pursuant to sections 175 and 206 of the Armed Forces Discipline Act 1971); visits Defence Force Service Custody and Service Corrective Establishments. This represents a significant development, as providing for the first time regular external monitoring of Defence Force detention facilities.</p> <p>The first year of operation of the multiple NPM was dedicated to assess the scope of the roles, develop a preventive monitoring programme, processes and measures based on international human rights standards.</p> <p>A series of activities have been coordinated by the Human Rights Commission during 2008:</p> <ul style="list-style-type: none"> - meetings with all NPMs: The APT has been informed that the Commission held a number of roundtable meetings of NPMs, to develop a common understanding of the OPCAT; - meetings with civil society: The Commission also convened two roundtables meetings with representative of civil society, to provide them with information on the role of the NPMs and their activities; and discussing ways that the monitoring bodies can cooperate with civil society organisations. The Commission plans to convene at least two meetings with civil society per year. - information sharing and resources development: In order to systematize the work done by all NPMs, and to give some consistency to the work of otherwise rather dissimilar bodies, a draft monitoring template and indicators were produced. <p>In May 2008, the APT met with the NZHRC in New Zealand to inquire about the last developments regarding the NPM activities. The APT has been informed that over the last few months, the NPMs have been assessing their in-house capacity to undertake visits. The list of indicators which has been discussed in September 2007 and that the APT had commented was used in connection with this exercise.</p> <ul style="list-style-type: none"> - review and coordination of reports: <p>In addition, it is likely that the Ombudsman's Office will stop visiting juvenile detention facilities and leave that responsibility to the Children's Commissioner. It is worth reminding that the NZHRC has a gap-filling function, which means they have to increase their capacity to do this type of work. To this end, they are planning to conduct a few joint visits with the Ombudsman's Office very shortly. The APT has also been informed that the objective of the NPM is to start visiting on a regular basis starting with the new financial year, which begins in July 2008.</p> <p>The NZHRC plans to simultaneously publish its general annual report and a separate report on NPM-related work, which would be of an informative nature rather than a comprehensive analysis of issues which need to be addressed. The NZHRC will work with the NPMs to identify systemic issues, as well as any potential gaps in the monitoring system. The first report of activities, which is meant to cover 2008, which is the first full year of operations, will be released by the NZHRC on behalf of all 5 NPMs. The NPMs are still in the process of mapping out all detention-related policies, regulations and institutional structures and the report will be released in September 2008. All other NPMs shall report on OPCAT-related work in their respective reports, which all come out at the same time.</p> <ul style="list-style-type: none"> - liaise with the UN Subcommittee <p>One the challenges identified by the Commission is the management of the relationship between existing complaints and investigations roles of NPMs, and the preventive mandate under the OPCAT.</p>
Legal framework	Crime of Torture Amendment Bill and its section on torture prevention (Part 2 of the consolidated version of the Crimes of Torture Act Torture prevention section).
NPM reports	NPM report 2008

OPCAT Country Status – Asia-Pacific

Timor-Leste

Signature: 16 September 2005- **Ratification:** under consideration

Updated on 22 December 2008

Background information	<p>Country population: 800 000 Area (sq km):15 000 Prison population: 320 Number of prisons: 3</p> <p><u>Consideration by international human rights bodies</u></p> <p>Core document forming part of the reports of States Parties – July 2007 Core document Timor Leste 2007</p>
OPCAT ratification and NPM designation processes	<p>In November 2007, the APT visited for the first time Timor-Leste, in order to raise awareness on the OPCAT and assess prospects for ratification. Few months after its visit, the APT drafted a briefing note in which it summarized the reasons why it considered Timor-Leste was in favourable position to ratify and implement the OPCAT. This note was translated into Bahasa Indonesia to maximise its dissemination (Bahasa English).</p> <p>The APT was informed that the OPCAT ratification had been referred to the Council of Ministers for its approval back in November 2007, but no progress has been made since that date.</p>
NPM options	<p><u>Existing monitoring mechanisms</u></p> <p>Although the Timor-Leste Ombudsman (<i>Provedoria de Direitos Humanos e Justiça</i> -PHDJ)'s legislation was adopted in 2004, the mandate-holder was appointed in May 2006. The PHDJ is not only a National Human Rights Institution, but also an Anti-Corruption Commission. The PHDJ has demonstrated interest and willingness to collaborate with Timorese human rights NGOs, and has conducted joint visit to places of detention. A partnership was formalised with the Human Rights Monitoring Network (<i>Rede de Monitoramento dos Direitos Humanos</i>), a coalition which brings together nearly all Timorese human rights NGOs, and whose members have developed monitoring activities in detention centres.</p> <p><u>NPM options</u></p> <p>The APT is not aware about any discussion taking place on the possible NPM option for Timor-Leste.</p>
Legal framework	<p><i>No NPM establishment law adopted yet</i></p>

Shaded boxes: States Parties to the OPCAT

Unshaded boxes: States that have signed the OPCAT or are due to sign it in a near future

OPCAT Country Status

Europe and Central Asia

Shaded boxes: States Parties to the OPCAT

Unshaded boxes: States that have signed the OPCAT or are due to sign it in a near future

Albania

Ratification: 1 October 2003 - **NPM DESIGNATED: PEOPLE'S ADVOCATE**

Updated on 22 June 2009

Background information	<p>Country population: 3,581,655 Area (sq km): 28,748 Prison population: 5041 Number of prisons: 13</p> <p>The US State Department in 2006 reported that the government permitted international human rights observers to visit both pre-trial detention centres and prisons and that it had not received reports of refusals to permit access for inspections by domestic independent human rights monitors. The OSCE also visited prisons during 2005, as did the CPT.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>Last CPT visit: March 2006. CPT reports HRC considered Albania in 204 Concluding observations (2004) CAT considered Albania in 2005 CAT Concluding observations Commissioner for Human Rights (Council of Europe) visited Albania in 2003 Commissioner HR visit report (2003)</p>
NPM designation process	<p>During a visit to Tirana in July 2007 the APT met a representative from the Ministry of Foreign Affairs, who stated that he was confident that a decision on the implementation of the OPCAT would be reached by the end of 2007 at the latest. The series of exchanges held in July 2007 (see below) were designed to facilitate this process.</p> <p>According to the examination of Albania's initial report by the UN Committee against Torture in May 2005, the Albanian authorities had organized a series of seminars to raise public awareness about the Optional Protocol and to identify possible actors for the national preventive mechanism. This information was corroborated at a meeting with a representative of the Permanent Mission of Albania to the UN in Geneva in May 2005. However, at that time, the Albanian representative had no concrete idea about how Albania would implement the OPCAT in practice.</p> <p>However, in July 2007 the Albanian Rehabilitation Centre of Trauma and Torture (ARCT), an affiliate of the IRCT, co-organized a series of national events on the implementation of the instrument in Albania. The APT attended the first of three events in Tirana on 18 July 2007, which was co-sponsored by the ARCT and the Ministry of Foreign Affairs, where a range of non-governmental and media representatives discussed this pressing matter.</p> <p>A second round-table event took place in Tirana on 23 July 2007 where this issue was further discussed by state, parliamentary and civil society representatives. This same subject matter also arose during a conference devoted to the issue of torture on 26 July 2007.</p> <p>In 2008 the Rehabilitation and Research Centre for Torture Victims (RCT) and the ARCT will embark upon a series of activities aimed at effectively implementing the OPCAT in practice. An event by the two organizations took place in Tirana on 10 March 2008, during which there was further discussion about Albania's proposed NPM. During the discussions, it appeared that the Parliamentary Ombudsman would have been given additional human resources in order to discharge the OPCAT function.</p>
NPM options	<p>The APT was informed that legislation came into force (Law 9688) on 15 April 2008 which designated the People's Advocate as the NPM. More specifically, Article 74 of the law outline the institution's various guarantees as well as the methodologies employed by it when visiting places of detention. It is of particular interest to note that information about the institution's activities are included on its website (please view the information under the heading organization!): "<i>The National Mechanism for Torture Prevention deals with conduction of inspections and visits to premises where individual freedom is deprived in order to prevent the cases of torture or other inhuman or degrading punishments. This structure has been set up pursuant to the "Optional Protocol of the Convention against Torture and other Inhuman and Degrading Punishments" (OPCAT) ratified by the Albanian Assembly, Law No. 9094, dated 03.07.2007. It started its activity in January 2008.</i>"</p>
NPM functioning	<p><u>Structural organisation</u></p> <p>A Torture Prevention Unit was created within the People's Advocate Office in January 2008 to assume the NPM mandate.</p>

Shaded boxes: States Parties to the OPCAT

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Albania

Ratification: 1 October 2003 - **NPM DESIGNATED: PEOPLE'S ADVOCATE**

Updated on 22 June 2009

	<p><u>Composition</u></p> <p>For the purposes of the OPCAT five additional staff to the People's Advocate Office were hired to bolster the capacity of the NPM unit within the institution.</p> <p><u>Monitoring places of detention</u></p> <p>According to the official correspondence sent to the SPT (see link below), the NPM carried out 45 inspections to places of detention, including to military establishments, psychiatric hospitals, centres for asylum seekers and illegal immigrants (July to November 2008). In addition, roundtables were organised with representatives from the relevant ministries and organisations from civil society. The APT learned at a later date that 120 visits are planned for 2009.</p> <p><u>Making public and policy recommendations</u></p> <p>It is reported that the NPM presented a thematic report in May 2008 on the state of mental health in Albania, and contributed to the process of improving the General Regulation of Prisons and to the project of constructing and restructuring detention centres in the country.</p>
SPT communications	<p>Official correspondence to the SPT informing about the NPM designation.</p>
Legal framework	<p>More information about the mechanism can be found on its website: www.avokatipopullit.gov.al</p> <p>OPCAT ratification Law in Albanian</p> <p>Annex 1 of the Official correspondence to the SPT</p> <p>People's Advocate Legal Basis</p>

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Armenia

Ratification: 14 September 2006 - **NPM DESIGNATED: Human Rights Defender's Office (Ombudsman)**

Updated on 02 April 2009

<p>Background information</p>	<p>Country population: 2,976,000 Area (sq km): 29,800 Prison population: 3,342 Number of prisons: 12</p> <p>The government permitted local NGOs, including the civil society comprised Prison Monitoring Group, as well as international human rights observers (including the ICRC and the CPT) to visit places of detention. The Prison Monitoring Group was authorised to visit prisons without prior notice, but they only had access to places of detention under the jurisdiction of the Ministry of Justice. In 2006 a similar body was established to monitor places of police detention, albeit with mixed results.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>In November 2006 the CPT published its report on its 2004 visit to Armenia (for further information, please consult CPT report) and highlighted very poor conditions of detention. Local NGOs reported practices of beating citizens during arrest and during interrogation while in detention.</p> <p>CAT considered Armenia in November 2000 CAT Concluding observations .</p> <p>Commissioner for Human Rights (Council of Europe) visited Armenia in 2008 Commissioner HR visit report (2008)</p>
<p>NPM designation process</p>	<p>Throughout 2005 a series of three national round-tables on the Optional Protocol were co-organized by the Armenian NGO, Civil Society Institute (CSI) (www.csi.am) and Penal Reform International's (PRI) Tbilisi Regional Office (www.pri.ge) in order to promote the instrument in the country. On two of these occasions the APT was invited to travel to Armenia in order to share its expertise with round-table participants, namely in Yerevan in May and in Sevan in November 2005. This process of promoting the instrument was particularly successful and, arguably, it would not have progressed so quickly, if there had not been an inclusive discussion on the matter between the Armenian authorities and civil society.</p> <p>In the second half of 2006 several seminars were held by CSI and PRI in order to discuss possible implementation of the OPCAT. At a meeting in Sevan on 14 September 2006 NGO, Prison Monitoring Group and the Human Rights Defender's Office (Ombudsman's Office) representatives discussed the implementation of the OPCAT in the country. The participants reportedly concluded that Armenia should adopt a multiple mechanism approach to the instrument. A follow-up meeting in relation to this matter was held in Sevan on 7 November 2006, which was also attended by the APT. Once again, the meeting underscored the importance of designating more than one mechanism and opted for what has become termed as the 'Ombudsperson plus' model. According to this model, the Ombudsperson's Office will play a dominant role in the NPM, albeit with other potential civil society actors.</p> <p>CSI used the six-month deadline by which Armenia should have established an independent national monitoring mechanism to kick-start discussions on the form the said body should take. To this end CSI held a workshop on 15 March 2007 in Yerevan. The event concluded by reaching an agreement to establish a working group – sponsored by the Human Rights Defender's Office – to work more concretely on the pressing need to establish an NPM, including by possibly drafting its related statutes and legislation.</p>
<p>NPM options</p>	<p>Throughout the remainder of 2007 and in 2008 several meetings and seminars were held on the issue of Armenia's NPM, although there appeared to be little concrete progress in this regard. However, in April 2008 Armenia's parliament, National Assembly, passed an amendment to the Law on the Human Rights Defender's Office, which designated this institution as the NPM. This proposal had originally emerged in November 2007 and proceeded through parliament despite repeated calls of Armenian civil society to be included in the process determining the country's NPM as well as in the institution itself. Shortly afterwards, during a one-day seminar held on this issue in Yerevan on 23 June 2008 by the Helsinki Committee of Armenia, OSCE Office in Yerevan and the Open Society Institute civil society re-iterated its wish to be included in the NPM, possibly in the form of an 'ombudsperson plus' model. At the same event the Ombudsman informed the audience that he would consider such an arrangement. Unfortunately, to date, nothing tangible has emerged in this respect. More recently, on 19 March 2009 at a large-scale conference held on human rights in Yerevan the Ombudsman reportedly stated that he was willing to involve civil society in the work of the NPM. It therefore remains to be seen whether anything comes of this assurance.</p>

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OPCAT Country Status – Europe and Central Asia

Armenia

Ratification: 14 September 2006 - **NPM DESIGNATED: Human Rights Defender's Office (Ombudsman)**

Updated on 02 April 2009

Legal framework

OPCAT ratification Resolution of the National Assembly ([unofficial translation](#))

NPM designation law: Amendment to the Law on the Human Rights Defender's Office, adopted on 8 April 2008 (Article 6.1; [Unofficial translation](#))

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OPCAT Country Status – Europe and Central Asia

Austria

Signature: 25 September 2003 - **Ratification** : under consideration

Updated on 03 December 2008

<p>Background information</p>	<p>Population: 8,192,880 Area (sq km): 83,870 Prison population: 8766 Number of prisons: 28</p> <p><u>Consideration by international and regional human rights mechanisms:</u> CAT considered the report of Austria in 2005 CAT Concluding observations Last CPT visit in 2004 CPT visit report Commissioner for Human Rights (Council of Europe) visited Austria in 2007 Commissioner HR visit report (2007)</p> <p><u>Federal Structure:</u> Austria is divided into 9 States.</p>
<p>OPCAT ratification and NPM designation processes</p>	<p>The APT learnt that in November 2006 an inter-ministerial group met for the first time to examine the OPCAT implementation. The group reportedly were in favour of using an existing monitoring mechanism, the Human Rights Advisory Board (<i>Menschenrechtsbeirat</i>) (HRAB), as a model on which to base Austria's future NPM (see below).</p> <p>The HRAB hosted a half-day podium discussion titled '<i>A National Preventive Mechanism (NPM) for Austria – The Implementation of the OPCAT</i>' in Vienna on 14 September 2007. Although there have been ongoing discussions regarding the implementation of the OPCAT in Austria, in recent times the podium discussion has been the highest profile meeting on this issue. The event attracted in excess of 70 participants, including an impressive number of high-profile international human rights figures such as the UN Special Rapporteur on Torture, Manfred Nowak, and the First Vice-President of the CPT, Renate Kicker. The event was also well attended by HRAB commission members and prominent human rights lawyers.</p> <p>Austria is going through pre-term parliamentary elections in September 2008 and the issue of OPCAT ratification and implementation might then be delayed until a new government assumes its functions.</p>
<p>NPM options</p>	<p><u>Existing monitoring bodies</u></p> <p>Like several other countries in the Europe region, Austria finds itself in a position where it has no existing visiting mechanism that could act as an NPM without undergoing considerable modification. In 2005 the Ministry of Foreign Affairs commissioned a background paper, which examined existing inspection mechanisms in Austria in the light of OPCAT to ascertain whether they fulfilled the NPM criteria and to determine what steps should be taken to effectively implement the instrument. In short, the report concluded that many of the existing bodies had significant deficits in relation to the criteria laid down in the OPCAT text, including the HRAB.</p> <p><u>Proposed NPMs</u></p> <p>However, as previously noted, an inter-ministerial group is reportedly in favour of drawing the positive lessons from the eight year existence of the HRAB and use its as a basis to establish a new mechanism in the country. During the 14 September meeting in Vienna Heinz Patzelt, Secretary General of Amnesty International (AI) Austria, offered the audience a view of this possible NPM for Austria. This model draws heavily on the structure of the HRAB and it is outlined in an AI Austria position paper. In short, the paper envisages a centralized-decentralized system located within the Austrian <i>Volksanwaltschaft</i> or Ombudsman's Office. The task of monitoring places of detention would be allocated to decentralized commissions located in Austria's six regions. In addition, a national structure (<i>Leitungsgremium</i>) would be established and given responsibility for the overall coordination of the mechanism, analysis of its work and other policy-related issues. It should be noted that there also exists an ongoing discussion in Austria whether to change the constitution in order to securely anchor Austria's future NPM.</p> <p>Not all national actors appear in favour of establishing a new institution to serve as Austria's NPM. For instance, during a meeting held in Paris in January 2008 gathering all Ombudsmen from Europe, one of Austria's three Ombudspersons (<i>Mitglieder der Volksanwaltschaft</i>), Peter Kostelka, delivered a presentation in which he proposed that his office be remodelled to make it compliant with the OPCAT text. He rejected the notion of establishing a new institution primarily owing to its costs, potential overlap with other monitoring mechanisms and the time required to set up such a</p>

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OPCAT Country Status – Europe and Central Asia

	<p>body.</p> <p>These reservations notwithstanding, the APT remains in close contact with various relevant actors in order to stay abreast of any future activities concerning the establishment of Austria's NPM.</p>
Legal framework	<i>No NPM establishment law has been adopted yet.</i>

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Azerbaijan

Ratification: 28 January 2009 – **NPM DESIGNATED: COMMISSIONER FOR HUMAN RIGHTS (OMBUDSMAN)**

Updated on 5 March 2009

<p>Background information</p>	<p>Population: 7,961,619 Area (sq km): 86,600 Prison population: 18 259 Number of prisons: 52</p> <p>The Ministry of Internal Affairs (MIA) and Ministry of National Security (MNS) are responsible for internal security and report directly to the president. The MIA oversees local police forces and maintains internal civil defense troops. The MNS has a separate internal security force.</p> <p>As of 2005, the government permitted prison visits by international and local humanitarian and human rights groups. The ICRC also had unobstructed access to prisoners of war and to civilians held in connection with the conflict over Nagorno-Karabakh. Foreign observers were allowed to enter maximum-security prisons and to meet with alleged political prisoners. On August 16, the government authorized a select group of local human rights activists to visit Ministry of Internal Affairs-run police stations and pre-trial detention facilities in addition to prisons.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>Last CPT visit in 2006 and last report in 2002 CPT visit report (2002)</p> <p>Commissioner for Human Rights (Council of Europe) visited Azerbaijan in 2007 Commissioner HR visit report (2007)</p> <p>Azerbaijan's report was examined by the UPR of the Human Rights Council in February 2009 National report</p>
<p>OPCAT ratification and NPM designation processes</p>	<p>Prior to Azerbaijan ratifying the OPCAT in January 2009 it was unclear how much discussion had taken place domestically on the issue of ratification and implementation of the instrument. Although the APT had participated in one round-table discussion devoted to the OPCAT in Baku in May 2005, the organization has no information at its disposal regarding other public meetings.</p> <p>On 13 January 2009, Azerbaijan designated the Commissioner of the Human Rights (Ombudsman) as the NPM by presidential decree. It made the designation public through a declaration under Article 17 upon ratification:</p> <p><i>“The Ministry of Foreign Affairs of the Republic of Azerbaijan.....has the honour to inform that the Commissioner of the Human Rights (Ombudsman) of the Republic of Azerbaijan was designated by the Decree of the President of the Republic of Azerbaijan No. 112, dated January 13, 2009 as the national preventive mechanism according to Article 17 of the (United Nations) Optional Protocol to the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment.”</i></p> <p>Azerbaijan also declared on the occasion of the ratification that: <i>“it is unable to guarantee the application of the provisions of the Protocol in the territories occupied by the Republic of Armenia until these territories are liberated from occupation.”</i></p>
<p>NPM options</p>	<p>The OSCE's Office for Democratic Institutions and Human Rights (ODIHR) and the OPCAT Research Group at the Law School of the University of Bristol organized a two-day conference on the OPCAT in the OSCE region on 25-26 November 2008 titled ‘<i>OPCAT in the OSCE region: What it means and how to make it work?</i>’. The event, which was held in Prague, Czech Republic, had a strong focus on OPCAT implementation in OSCE participating States formerly part of the Soviet Union, including Azerbaijan. During the event, the Azeri Ombudsperson, Elmira Suleymanova, argued in favour of her institution being designated as the NPM. She added, however, that non-governmental organizations might also have a role to play in this connection.</p> <p>The APT was also informed about some reservations made by relevant stakeholders regarding the institution's compliance with the minimum provisions of the instrument.</p>
<p>Legal framework</p>	<p>Presidential Decree No. 112, dated January 13, 2009 (UNOFFICIAL TRANSLATION) Constitutional law Commissioner for Human Rights (UNOFFICIAL TRANSLATION)</p>

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OPCAT Country Status – Europe and Central Asia

Belgium

Signature: 24 October 2005 - **Ratification :** under consideration

Updated on 15 May 2009

Background information	<p>Population: 10,379,067 Area (sq km): 30,528 Prison population: 9 597 Number of prisons: 34</p> <p>Since 1994, Belgium has been a federal state. The regional and community governments have jurisdiction over transportation, public works, water policy, cultural matters, education, public health, environment, housing, zoning, economic and industrial policy, agriculture, foreign trade, and oversight of provincial and local governments. They rely on a system of revenue sharing with the federal government for most of their funds.</p> <p>The federal police council, an anticorruption unit, and the federal interior ministry manage the operations of the federal police forces. An independent oversight committee monitors police activities and compiles an annual report for parliament. The federal police are responsible for internal security and nationwide law and order. The local police operate branches in 196 police districts responsible for local law enforcement.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>CPT visited Belgium in 2005 CPT report 2005</p> <p>The CAT considered Belgium's report in November 2008 CAT Concluding observations</p>
OPCAT ratification and NPM designation processes	<p>On 7 March 2007 the APT wrote to Karl De Gucht, the Minister of Foreign Affairs of Belgium to obtain information about Belgium's intentions in relation to establishing an NPM and when the country envisages ratifying the OPCAT. To date, there has been no response to the letter.</p> <p>NGOs expected the government, which was convened after June 2007 elections, to take action with regard to OPCAT ratification and implementation. Belgium is currently governed by a three months interim government and the OPCAT ratification seems not to be a priority. Furthermore, it seems that budgetary implications on the establishment of an NPM and federal divisions of authority may present obstacles delaying ratification. Actually, the various places of detention are under the responsibility of three different jurisdictions: the federal, regional and communal.</p> <p>In November 2008, the CAT recommended that Belgium took all the necessary measures to promptly ratify the OPCAT, and establish an NPM. In May 2009 in support to its candidacy to the UN Human Rights Council, Belgium pledged that it: <i>"is currently doing everything it can to ratify without delay the legal instruments adopted recently, namely (..) the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (...)"</i></p>
NPM options	<p>On one hand, a large network of NGOs, lead by the Belgium section of Amnesty International, have proposed that a Commission belge des droits fondamentaux (Belgian National Human Rights Commission) be created, which would include a mandate to act as the NPM (art 2(f)).</p> <p>On another hand, according to the Federal Ombudsman (Médiateur fédéral), the institution would require two major changes to assume the NPM mandate. First of all, the Federal Ombudsman has no express mandate about the protection and promotion of human rights and fundamental freedoms, that is to say, the institution does not have a right of initiative on this. Furthermore, it must always reserve the findings of the investigation into complaints first for the Parliament. For instance, the Federal Ombudsman had been mandated recently by the legislative power to visit administrative detention centres for asylum seekers and immigrants. Its mandate should then be expanded to the capacity of conducting visits to places of detention without being specifically mandated by the Parliament.</p> <p>Secondly, the institution would need additional resources (both financial and human) to function as an effective NPM. If this institution would be designated as the NPM, the Federal Ombudsman envisage then to be a coordinating body, and rely on regional and communal Ombudsmen for the supervision of specific places of detention under their responsibility.</p>
Legal framework	<p>NGOs proposal</p>

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Bosnia and Herzegovina

Ratification 24 October 2008 – NPM designation: pending

Updated on 19 June 2009

Background information	<p>Population: 4,552,198 Area (sq km): 51,129 Prison population: 1,665 Number of prison establishments/institutions: 8</p> <p>After several years of armed interethnic conflict following the break-up of former Yugoslavia peace was established by the 1995 Dayton Peace Accords. The latter retained Bosnia and Herzegovina's international boundaries and created a joint multi-ethnic government with responsibility for conducting foreign and fiscal policy. In addition, a second tier of government was established which was responsible for most other functions of state, consisting of the Federation of Bosnia and Herzegovina and the Republika Srpska.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>To date, the CPT has visited the country on three occasions, the reports of two of the visits are available on the CPT website: CPT reports The most recent report from 2007 highlights ongoing problems concerning the conditions of detention of persons deprived of their liberty in a range of facilities, including places of police detention, prisons, psychiatric institutions and social care homes. Moreover, serious and numerous acts of deliberate physical abuse by public officials were noted in places of police detention as well as prisons.</p> <p>CPT visited Bosnia and Herzegovina in 2007 CPT report 2007</p> <p>Commissioner for Human Rights (Council of Europe) visited Bosnia and Herzegovina in 2007 Commissioner HR visit report (2007)</p> <p><u>Federal Structure</u></p> <p>2 first-order administrative divisions and 1 internationally supervised district</p>
NPM designation process	<p>On 24 October 2008, Bosnia and Herzegovina ratified the OPCAT. In early November 2008 the APT wrote to the Ministry of Foreign Affairs of Bosnia and Herzegovina to congratulate them on the fact of ratification and to request more information about possible implementation of the instrument.</p> <p>It should be noted that, as in other federal states, Bosnia and Herzegovina's federal structure may present additional challenges to the setting up of an NPM. Nonetheless, Bosnia and Herzegovina and the Republika Srpska have had human rights ombudspersons type institutions since 2000, which investigate complaints concerning places of deprivation of liberty.</p>
NPM options	<p>The Ministry of Human Rights and Refugees reportedly initiated internal deliberations about ratification of the instrument in March 2008. Agreement by the Presidential Administration was secured in October 2008, shortly after which the ratification of the OPCAT took place. No concrete NPM proposal was known at the time of writing, although one emerged in 2009 which would entail the establishment of a separate NPM unit with the Ombudsperson's Office. The APT is informed that later in 2009 several round-table events may be held in order to discuss this and other proposals, including with civil society. The organization is likely to participate in this welcome process.</p>
Legal framework	<p><i>No NPM establishment law has been adopted yet.</i></p>

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OPCAT Country Status – Europe and Central Asia

Croatia

Ratification: 14 September 2006 - **NPM establishment:** due to take place before 14 September 2007

Updated on 19 June 2009

<p>Background information</p>	<p>Population: 4,494,749 Area (sq km): 56,542 Prison population: 3594 Number of prisons: 23</p> <p>There are approximately 21 thousand police officers under the authority of the interior ministry. The national police have primary responsibility for international security; in times of disorder, the government and the president may call upon the military to provide security.</p> <p>Ms.Marija Definis Gojanovic was elected as a member of the SPT on 18 December 2006 for a four year term.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>HRC will examine Croatia's report in October 2009 National report</p> <p>CAT considered Croatia report in May 2004 CAT Concluding observations</p> <p>Commissioner for Human Rights (Council of Europe) visited Croatia in 2004 Commissioner HR visit report (2004)</p> <p>Last CPT visit May 2007. CPT reports</p>
<p>NPM designation process</p>	<p>In late March 2007 the APT wrote to the Minister of Foreign Affairs and European Integration of Croatia, Kolinda Grabar-Kitarović, with a view to obtaining more precise information about the NPM process in the country. To date, no response has been forthcoming from the Ministry.</p>
<p>NPM options</p>	<p>The APT was informed that the Ministry of the Interior had been given the task of coordinating the process of determining the country's NPM. Originally, it had been envisaged that the Ombudsperson's Office would be designated as the NPM, although two opinions emerged during these discussions which questioned the compatibility of the institution with the provisions of the OPCAT. The objections reportedly related to the lack of professional diversity of the institution and that its staff members lacked the necessary independence due to their status as civil servants. It was therefore proposed that a separate entity be established for the purpose of the NPM. Consequently, the process has been a rather drawn-out affair in Croatia, though a meeting was reportedly scheduled for late April 2009 (including civil society representatives) with a view to continuing these discussions.</p>
<p>Legal framework</p>	<p><i>No NPM establishment law has been adopted yet.</i></p>

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Cyprus

Ratification: 29 April 2009 – NPM designation: under consideration

Updated on 30 April 2009

Background information	<p>Population: 784,301⁵ Area (sq km): 9,250 Prison population: 580⁶ Number of prisons: 1</p> <p>The Cyprus Police maintain internal security. The Greek Cypriot National Guard backed by a contingent of Greek military forces is primarily responsible for external security but also has domestic security responsibilities. The Greek Cypriot National Guard is headed by a Greek military officer retired from the Greek Army who reports to the Greek Cypriot Ministry of Defense, which reports to the Greek Cypriot President. Greek military forces in Cyprus report directly to the Greek military. The police are the responsibility of the Ministry of Justice and Public Order. The president appoints the chief of the police. The police force is divided into headquarters (with six departments), six district divisions (including one inactive district located in the area under the Turkish Cypriot administration), and seven police units that provide specialized services.</p> <p>In March 2005 the NGO Ethnopad (National Organization for the Protection of Human Rights) made an impromptu visit to police holding cells (attached to the prison) where many illegal immigrants and/or asylum seekers were held and called on the government to institute reforms. Ethnopad also asked the government to address problems in the prison system and to stop imprisoning debtors, drug addicts, and patients suffering from mental health difficulties. The US Department of State reports that, as of 2005, the government permitted prison visits by independent human rights observers.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>Last CPT visit in 2008 and last CPT report in 2004 CPT report (2004)</p> <p>CAT considered Cyprus in 2002 CAT Concluding observations</p> <p>Commissioner for Human Rights (Council of Europe) visited Cyprus in 2004 Commissioner HR visit report (2004)</p>
OPCAT ratification and NPM designation processes	<p>On 7 March 2007 the APT wrote to Yiorgos Lillikas, the Minister of Foreign Affairs of Cyprus to obtain information about Cyprus' intentions in relation to establishing an NPM and when the country envisages ratifying the OPCAT.</p> <p>On 16 April 2007 the organization received a response from the Ministry of Foreign Affairs, concluding that: <i>"Upon completion of the above evaluation and finalization of decisions on this matter, the ratification Law and other necessary national laws will be prepared and processed simultaneously for approval to the Council of Ministers, and then to the House of Representatives."</i></p> <p>On 29 April 2009, Cyprus officially became the 47th State Party to the OPCAT.</p>
NPM options	<p>In its reply to the APT, the Ministry of Foreign Affairs stated that Cyprus was planning to designate a modified existing national mechanism as the NPM without naming the mechanism specifically. The APT learned that the Cypriot authorities were also in the process of examining the possibility of designating more than one national mechanism.</p> <p>The APT was informed in January 2008 that the government initially considered, upon the recommendation of the National Institute for the Protection of Human Rights, that this institution with the Office of the Commissioner for Administration (Ombudsman) should be designated as the NPM. Finally, for practical purposes, it was deemed that only one mechanism should assume the NPM mandate, namely the Office of Ombudsman.</p>
Legal framework	No NPM law adopted yet

⁵ Figure does not include the internationally non-recognized Turkish Republic of Northern Cyprus.

⁶ Figure does not include the internationally non-recognized Turkish Republic of Northern Cyprus.

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Czech Republic

Ratification: 10 July 2006 - NPM DESIGNATED (OMBUDSMAN)

Updated on 22 June 2009

Background information	<p>Population: 10,235,455 Area (sq km): 78,866 Prison population: 21 780 Number of prisons: 35 Psychiatric institutions: 24 Immigration detention centres: 22 Military detention facilities: 1 Homes for juveniles: 228</p> <p>The Czech Republic is a constitutional democracy, formed in 1993 through a peaceful division of the formerly federal state of Czechoslovakia.</p> <p>The national police are responsible for enforcing the law and maintaining order. The Ministry of Interior oversees the police, and the ministry's inspectorate is responsible for investigating allegations of police misconduct.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>SPT: Mr. Zdenek Hajek was elected as member of the SPT on 18 December 2006 for a two year term, and was re-elected on 30 October 2008 for a four year-term.</p> <p>Last CPT visit: March 2006 See CPT reports</p> <p>CAT considered Czech report in May 2004 CAT Concluding observations</p> <p>Commissioner for Human Rights (Council of Europe) visited Czech Republic in 2006 Commissioner HR visit report (2006)</p>
NPM designation process	The legislation to implement OPCAT was adopted by Parliament in 2006.
NPM options	<p>The authorities have designated the Public Defender of Rights (Ombudsman) as its NPM.</p> <p>In order for the institution to comply with the OPCAT text, changes were made to its legislative basis through an amendment, which came into force on 1 January 2006. The Ombudsman's website asserted in early January 2006 that "(t)he Czech Ombudsman, furnished with his new mandate, will meet all the criteria set out by the Optional Protocol for so-called National Preventive Mechanism, and therefore no further steps towards its implementation need to be taken after ratification, which is in progress in the Czech Republic."⁷</p> <p>The institution was reportedly chosen as the NPM owing to its institutional and financial independence, previous experience in monitoring places of detention and its authority within Czech society.</p>
NP functioning	<p><u>Structural organisation</u></p> <p>A special department has been established in the institution to undertake the OPCAT related work. The NPM's structure is particularly interesting, as the NPM department is completely institutionally separated from the department dealing with complaints.</p> <p><u>Composition</u></p> <p>The OPCAT department comprises 12 lawyers of balanced gender. The unit also has the ability to hire external expertise on an <i>ad hoc</i> basis such as doctors, psychiatrists and psychologists to compensate for the institution's professional homogeneity.</p> <p><u>Monitoring places of detention</u></p> <p>Prior to the amendment designating the Ombudsman as the NPM taking effect, the Ombudsman's monitoring activities of closed institutions generally occurred in response to it receiving complaints and it did not undertake comprehensive and systematic inspections of places of detention. The amendment of January 2006 permits the Ombudsman to undertake the types of visits envisaged in the OPCAT text. The Ombudsman is now explicitly mandated to carry out inspections to a wide range of detention facilities, including prisons, police cells, facilities for the detention of foreigners and asylum-seekers, military facilities, facilities providing protective or institutional care, social care and healthcare facilities and facilities providing social and legal protection for children. Since 2006 the NPM has been monitoring a range of places of detention, including less typical facilities such as</p>

⁷ News release dated 1 January 2006.**Shaded boxes:** States Parties to the OPCAT**Unshaded boxes:** States that have signed the OPCAT or are due to sign it in a near future

OPCAT Country Status – Europe and Central Asia

	social care homes, homes for the elderly and psychiatric hospitals.
Legal framework	Public Defender of Rights Law and Amendments.
SPT communications	Official correspondence to the SPT designating the NPM
NPM reports	Public Defender of Rights' annual report (2007) , Part IV Reports of the Public Defender of Rights available at: http://www.ochrance.cz/en/cinnost/index.php NPM webpage

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DenmarkRatification: 25 June 2004 - **NPM DESIGNATED (OMBUDSMAN in collaboration with NGOs)**

Updated on 19 June 2009

Background information	<p>Population: 5,450,661 Area (sq km): 43,094 Prison population: 4198 Number of prisons: 57</p> <p>Denmark is a constitutional monarchy, with a unicameral parliament. The country is divided into 13 counties (Amter) and 271 municipalities (Kommuner). The cities of Copenhagen and Frederiksberg function as both counties and municipalities. The Faroe Islands and Greenland enjoy home rule, with the Danish Government represented locally by high commissioners. These home rule governments are responsible for most domestic affairs, with foreign relations, monetary affairs, and defence falling to the Danish Government. At the international level, Denmark has been a diplomatic leader on issues of torture, and Danish NGOs dealing with rehabilitation of torture victims are very active internationally. The national police, under the Ministry of Justice, have sole policing authority in the country. There are 54 police districts (plus the Faroe Islands and Greenland) and a national commissioner's office. The minister of justice, with the approval of parliament, appoints the police chiefs of each district and the national commissioner.</p> <p>It is also relevant to note that during its examination of Denmark's fifth periodic report in May 2007 the UN Committee against Torture commended Denmark on its efforts to promote the universal ratification of the OPCAT as well as its early ratification of the instrument in 2004.⁸</p> <p>SPT: Mr. Hans Draminsky Petersen was elected as a SPT member on 18 December 2006 for a four year term.</p> <p>Consideration by international and regional human rights mechanisms:</p> <p>Last CPT visit: 2008. CPT report (2002)</p> <p>CAT considered Danish report in May 2007 CAT Concluding observations</p> <p>Commissioner for Human Rights (Council of Europe) visited Denmark in 2007 Commissioner HR visit report (2007)</p> <p>HRC considered Danish report in October 2008 HRC Concluding observations</p>
NPM designation process	<p>From the outset the Danish authorities were believed to have wanted to implement the OPCAT by designating the Danish Parliamentary Commissioner for Civil and Military Administration (<i>Folketingets Ombudsmand</i>) or Ombudsman as the country's NPM. The mechanism considers complaints concerning all parts of public administration, except for the judiciary. However, several of Denmark's principal torture-related NGOs questioned the suitability of this body for the purpose of OPCAT implementation and opened up a domestic discussion on this matter.</p> <p>In February 2007, the Danish NGO, Rehabilitation and Research Centre for Torture Victims (RCT) submitted its <i>Alternative Report to the list of issues to be considered by the UN Committee against Torture during the examination of the 5th periodic report of Denmark</i>, which took place in Geneva in May 2007. In its report the RCT stated: "<i>In anticipation of Denmark's establishment of its NPM, RCT made a legal study of the existing Danish visiting mechanisms and assessed them against the OPCAT. The study - "New Optional Protocol to the UN Convention against Torture – Danish Ratification and Implementation" was published in a Danish human rights journal in 2003. The main conclusion of the study was that the existing domestic visiting mechanisms of the Ombudsman and the parliamentary Section 71-Inspection, respectively, would not be able to live up to the obligations of Denmark under the OPCAT.</i>"⁹ The organization argued that several factors undermined the NPM's compliance with the criteria laid down the OPCAT text, including: its homogenous (legal) professional composition; limited resources; so-called mode of operation (namely it does not reportedly fulfil all of the functions laid down in Article 19 of the text); and the standards of assessments used by the mechanism during visits. A detailed account of these criticisms can be found in the RCT's report.¹⁰</p> <p>In its written response to the list of the issues and the matter of how Denmark will implement the OPCAT at the national level the country stated that: "<i>The Parliamentary Ombudsman undertakes systematic inspection of places of detention and will continue to do so as the national preventive</i></p>

⁸ UN Doc. CAT/C/DNK/CO/5, 16 May 2007 – paragraph 8c.

⁹ See page 19 of the report, which is available at: http://www.ohchr.org/english/bodies/cat/docs/ngos/RCT-Alternative_report.pdf

¹⁰ *Alternative Report to the list of issues to be considered by the UN Committee against Torture during the examination of the 5th periodic report of Denmark*, 19 February 2007 – pages 19-21.

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Denmark

Ratification: 25 June 2004 - **NPM DESIGNATED (OMBUDSMAN in collaboration with NGOs)**

Updated on 19 June 2009

	<p><i>mechanism under the Optional Protocol. In the light of experience gained during the implementation of the Optional Protocol it will be assessed if there is need to adjust the present arrangement e.g. in order to make special expertise available to the Ombudsman.”¹¹</i></p> <p>In June 2007 the Ministry of Foreign Affairs reportedly sought comments from the Foreign Relations Committee in relation to its intention to designate the Danish Parliamentary Commissioner for Civil and Military Administration as the NPM. In the reported absence of any comments the Ministry of Foreign Affairs is said to have formally notified the UN of Denmark’s designation of this institution as the NPM. However, the Danish Ombudsman expressed its concerns in relation to its designation as NPM, arguing a lack of necessary human and financial resources to carry out this new mandate.</p>
NPM options	<p>The Danish Parliamentary Commissioner for Civil and Military Administration was initially designated as the Danish NPM.</p> <p>However, throughout the period 2007-2008 various exchanges took place between certain interested national actors to discuss how some of the deficits, referred to above, might be addressed. In April 2009 the Danish Parliamentary Commissioner for Civil and Military Administration concluded a formal agreement with the Danish Institute for Human Rights and the NGO, Rehabilitation and Research Centre for Torture Victims, with a view to collaborating with one another as the NPM.</p>
NPM functioning	<p><u>Structural organisation</u></p> <p>The collaboration between the Danish Parliamentary Commissioner for Civil and Military Administration, the Danish Institute for Human Rights and the NGO RCT is based on a Memorandum of Understanding, which foresees that the three institutions will jointly participate in an OPCAT Council and OPCAT Working Group. The OPCAT Council will have a wider governance role, while the OPCAT Working Group will undertake the visits to places of detention.</p> <p><u>Composition</u></p> <p>It is expected that the two additional actors will provide the Parliamentary Commissioner respectively with expertise in the fields of international human rights law and medicine.</p> <p><u>Monitoring places of detention</u></p> <p>It is expected that medical doctors from RCT will accompany the NPM visits to places of detention. RCT and the Danish Institute for Human Rights are involved in the planning, carrying out and reporting of the all visits. It is foreseen that the NPM will commence its program of visits in the second half of 2009 with an initial schedule of 5-6 visits, which will be increased year by year.</p> <p><u>Making public and policy recommendations</u></p> <p>RCT and the Danish Institute for Human Rights are involved in commenting draft and existing legislation, including in the monitoring manual of the NPM.</p> <p><u>Other relevant issues</u></p> <p>In addition, the NPM has already identified several thematic areas which it will focus on, including staff-prisoner relations, discrimination, use of force in various contexts, access to health and follow-up to the reports of the European Committee for the Prevention of Torture.</p>
SPT communications	<p>Official correspondence to the SPT designating the NPM</p>
Legal framework	<p>No NPM establishment law has been adopted yet.</p>

¹¹ UN Doc. CAT/C/DNK/Q/5 Rev.1/Add.1, 26 March 2007 – paragraph 269.

EstoniaRatification: 18 December 2006 - **NPM DESIGNATED (CHANCELLOR OF JUSTICE)**

Updated on 20 February 2009

Background information	<p>Country population: 1,324,333 Area (sq km): 45,226 Prison population: 3350 Number of prisons: 6</p> <p>The national police, security police, tax and customs board, and national border guard have responsibility for law enforcement and maintenance of order. The police, security police and national border guard are subordinate to the Ministry of Internal Affairs. The tax and customs board is subordinate to the Ministry of Finance. Prison personnel are subordinate to the Ministry of Justice. The army is responsible for external security but also has domestic security responsibilities in case of threat to the constitutional order of the country. The police board is the central and supervisory authority, which manages, directs, and coordinates the activities of police agencies under its administration. There are three police agencies and four regional police prefectures.</p> <p>Consideration by international and regional human rights mechanisms</p> <p>CAT considered Estonian report in November 2007 CAT Concluding observations</p> <p>Last CPT visit in 2007 and last visit report in 2003 CPT visit report (2003)</p> <p>Commissioner for Human Rights (Council of Europe) visited Estonia in 2004 and follow-up recommendations in 2007 Commissioner HR recommendations (2007)</p> <p>SPT will engage with the NPM in 2009.</p>
NPM designation process	<p>Estonia was the first country of the former Soviet Union to sign the Optional Protocol in September 2004. The Ministry of Foreign Affairs, which had taken the lead on signature and ratification of the instrument in the country, stated that no serious opposition to ratification had been encountered in any of the ministries at any point during the process of signature and ratification. As a result, the Estonian parliament, the Riigikogu, passed the second reading of the draft Ratification Act of the Optional Protocol on 18 October 2006. The instrument of ratification was subsequently deposited with the United Nations Secretary General on 18 December 2006.</p>
NPM options	<p>Initially, Estonia had considered both the creation of an entirely new body and the designation of an existing monitoring mechanism. Due to cost considerations and the existence of the Office of the Chancellor of Justice (Ombudsman) or Õiguskantsler (www.oiguskantsler.ee) it was deemed expedient to designate the latter body as the NPM.</p> <p>In its capacity of national ombudsman, the Office of the Chancellor of Justice ensures that acts of state officials are in accordance with the law and that all new laws, decrees and other acts are in conformity with the constitution and existing legislation. The Office of the Chancellor of Justice has an obligation to investigate complaints of violations of law lodged with it, including from persons deprived of their liberty. The current Chancellor of Justice, Allars Jõks, has stated publicly that most of the complaints his office receives relate to the material conditions of detention in pre-trial detention facilities and prisons. However, in addition to investigating individual complaints, the Office of the Chancellor of Justice undertakes a system of planned visits - usually pre-announced - to detention facilities. On average two prisons are inspected in any given year and all seven of Estonia's prisons can usually be visited over a period of four years.</p> <p>While the Office of the Chancellor of Justice may on the whole appear to fulfil the criteria laid down in the OPCAT text, there remain a number of questions which need to be answered. For example, it is not clear how regularly other types of places of detention such as police stations, centres for migrants or psychiatric institutions are visited in practice. Moreover, the Office comprises to a very large degree lawyers and, as a result, its composition ideally needs to be varied to include other professional groups such as doctors, psychologists etc. Nevertheless, with some modification or change in operational practice the Office of the Chancellor of Justice could fulfil the minimum OPCAT criteria.</p> <p>It is interesting to note that the CAT, in its November 2007 concluding observations, noted that: <i>“the Chancellor of Justice has been designated as the national protection mechanism pursuant to article 3 of the Optional Protocol the Convention, recognizing its role in inspecting places of detention and welcoming the publication of its reports in different languages, the Committee remains concerned about its independence, mandate and resources, as well as its ability to investigate all complaints of violation of the provisions of the Convention (arts.2 and 11).”</i> The CAT recommended then Estonia to <i>“consider establishing a national institution for the promotion and protection of human rights, in accordance with the Paris Principles (General Assembly resolution 48/134, annex) and provide it</i></p>

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Unshaded boxes: States that have signed the OPCAT or are due to sign it in a near future

OPCAT Country Status – Europe and Central Asia

Estonia

Ratification: 18 December 2006 - **NPM DESIGNATED (CHANCELLOR OF JUSTICE)**

Updated on 20 February 2009

	<i>with the adequate resources to carry out its mandate.”</i>
NPM report	Chancellor of Justice report 2007 (see p.6)
SPT communications	Official correspondence to the SPT designating the NPM
Legal framework	Unofficial overview of the amended Chancellor of Justice Act Chancellor of Justice Act (without amendments) Chancellor of Justice Act (in Estonian)

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OPCAT Country Status – Europe and Central Asia

Finland

Signature: 23 September 2003 - **Ratification:** under consideration

Updated on 25 May 2009

Background information	<p>Population: 5,231,372 Area (sq km): 338,145 Prison population: 3954 Number of prisons: 38</p> <p>Finland is a constitutional republic with a directly elected head of state (president), a parliament, a head of government (prime minister), and an independent judiciary.</p> <p>Of the nearly four thousand inmates in the country's prisons, 70 percent were estimated by the government to be drug addicts and in need of rehabilitation.</p> <p>The national police force is centralized under the control of the Ministry of the Interior, which also controls various other law enforcement organizations such as the frontier guards, customs and immigration agencies, the national bureau for investigation (NBI), and the security police. Law enforcement organizations maintain internal investigation units that examined allegations of police abuse or misconduct.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>CAT considered Finland in 2005 CAT Concluding observations</p> <p>CPT visited Finland in 2008 and last visit report (2003): CPT visit report (2003)</p>
OPCAT ratification and NPM designation processes	<p>In late June 2006 the APT received a letter from the Ministry of Foreign Affairs informing it that it discussions on ratification were ongoing and that ratification could not take place before the question of either designating or creating an NPM had been settled. For this purpose a working group had been set up. The Ministry of Foreign Affairs noted that <i>“all options are open as to whether the mechanism shall be one already in existence or whether a new one needs to be founded.”</i></p> <p>The inter-ministerial working group was set up in September 2006 to examine how the OPCAT could be implemented in practice and to compose draft legislation. The working group comprises representatives from the Ministries of Defence, Foreign Affairs, Interior, Justice, and Social Affairs and the Office of the Parliamentary Ombudsman and was given the mandate to examine the implementation of the OPCAT. The APT was informed in January 2008 by a representative of the working group that it would continue its deliberations until the end of April 2008, when it would publish the conclusions of its work. In early June 2008, however, the Ministry of Foreign Affairs kindly informed the APT that the aforementioned deadline had been extended to 31 October 2008, when the working group was due to publish its findings in the form of a government bill. The Ministry also stated that, before reaching this point, the working group would hold a hearing for civil society representatives so that they have the chance to comment on its conclusions. The APT learnt that the inter-ministerial working group's deadline was extended to 31 March 2009 and then re-extended to the end of October 2009.</p>
NPM options	<p>The inter-ministerial working group is said to be generally in favour of the Parliamentary Ombudsman assuming the NPM function due to its overall compliance with the OPCAT text. A member of the working group and Legal Adviser at the Office of the Parliamentary Ombudsman, Jari Pirjola, has also written an article for a forthcoming edition of the Nordic Journal of International Law titled <i>‘The Parliamentary Ombudsman of Finland as a National Preventive Mechanism under the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’</i>. In the article the author examines the Office of the Parliamentary Ombudsman through the prism of the OPCAT text to assess its appropriateness as a potential NPM. Although the author recognizes that the institution displays certain deficiencies in relation to the instrument, he concludes that these should not prevent the Parliamentary Ombudsman being designated as Finland's NPM.</p> <p>It is relevant to note that Finland has several ombudsperson-like institutions, which have the task of exercising oversight to ensure that public officials act in accordance with the law including the Parliamentary Ombudsman, Ombudsman for Minorities and the Office for the Chancellor of Justice. While all three bodies can issue recommendations on policy issues, it is specifically the Parliamentary Ombudsman's Office which carries out inspections to detention facilities including prisons, military garrisons, psychiatric hospitals and other closed institutions. Like the Swedish Ombudsman model, the Finnish Parliamentary Ombudsman also has a prosecutorial function allowing it to file criminal charges against public officials suspected of serious wrong-doing. The APT intends to follow the ongoing ratification process in the country in the coming months.</p>

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OPCAT Country Status – Europe and Central Asia

[Finland](#)

Signature: 23 September 2003 - **Ratification:** under consideration

Updated on 25 May 2009

Legal framework

No NPM establishment law has been adopted yet.

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OPCAT Country Status – Europe and Central Asia

France

Ratification: 11 November 2008 – **NPM designated:** **General Inspector of Places of Deprivation of Liberty (NEW INSTITUTION)**

Updated on 5 May 2009

<p>Background information</p>	<p>Population: 60,876,136 Area (sq km): 547,030 Prison population: 52009 (Does not include overseas departments and territories) Number of prisons: 188 Number of detention centres: 5778</p> <p>The civilian force of 118'000 national police is under the supervision of the Ministry of the Interior, while the military of 90'000 national gendarmes is under the supervision of the Ministry of the Interior in coordination with the Ministry of Defence.</p> <p>Prison conditions generally meet international standards. However, credible non-governmental organizations (NGOs) report overcrowding and unacceptable hygiene conditions in certain prisons. The government continues to replace old prisons and construct new facilities.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>CAT considered France in 2005 CAT Concluding observations</p> <p>CPT visited France in 2006 CPT report 2006</p> <p>The Commissioner for Human Rights (Council of Europe) visited France in 2008 and last report in 2006 : Commissioner HR visit report (2006)</p> <p>France's report was examined by the HRC in the framework of the UPR in May 2008 National report</p>
<p>OPCAT ratification process</p>	<p>The French Senate ratified the OPCAT on 30 July 2008, and the ratification culminated with its deposit to the United Nations on 11 December 2008, with a declaration upon article 15 and 18 of the OPCAT:</p> <p><i>“Pursuant to articles 15 and 21 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, no French authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates or to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way, provided that, in the case of false information, the person or organization in question was unaware of the false nature of the information at the time of its communication and, moreover, without prejudice to the legal remedies that persons who are implicated may invoke for harm suffered as a result of the communication of false information about them.”</i></p> <p>The OPCAT ratification law was under consideration by the Parliament since 3 March 2008. According to a report presented by Ms Garriaud-Maylam, the interpretative declaration should be understood in the following context: If those provisions were to be given a liberal interpretation, the report indicates that this would make impossible any penal prosecution, even in the event of “<i>dénonciations calomnieuses</i>” (slandering/ defamatory denunciation). This is felt not be reconcilable with French domestic penal legislation. The declaration is meant to reduce the scope of these provisions and introduce the element of good faith in determining whether someone ought to be granted protection/immunity protected.</p>
<p>NPM designation process</p>	<p>The national discussions leading to the NPM designation took place before France's OPCAT ratification, and France had its NPM functioning before being officially State Party to the OPCAT.</p> <p><u>NPM options</u></p> <p>Some national existing bodies were initially considered to be potential NPM, including the <i>Commission nationale de déontologie de la sécurité</i> (CNDS), which responds to specific complaints sent by members of parliament concerning places of police detention. The <i>Médiateur de la République</i>, an institute with a broad Ombudsman mandate, was also examined as potential NPM.</p> <p>In April 2007, the <i>Médiateur de la République</i> put forward its proposals regarding how it could function as the NPM and published them in a position paper (June, 2007). In turn, the National Consultative Human Rights Commission (<i>Commission nationale consultative des droits de l'homme</i> or <i>CNCDH</i>) advanced its own position in this respect, proposing the designation of specific mechanisms corresponding to various places of detention, all of which would be</p>

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France

Ratification: 11 November 2008 – **NPM designated:** **General Inspector of Places of Deprivation of Liberty (NEW INSTITUTION)**

Updated on 5 May 2009

coordinated by a new body. According to this model, the coordinating body and the specific mechanisms would have constituted the overall French NPM.

However, in June 2007, after elections in France, a new government took office and the Ministry of Justice decided to promote the creation of an entirely new mechanism, the so-called **General Inspector for Places of Deprivation of Liberty** (*Contrôleur général des lieux de privation de liberté*). The Ministry of Justice subsequently elaborated a draft law, which was amended and then approved by the Senate on 18 October 2007.

Finally, the Balladur Commission on institutional reforms recommended in December 2007 the creation of a Fundamental Rights Ombudsman, institution which would comprise, amongst others, the *Médiateur de la République* and the future General Inspector. On 23 April 2008, the Government approved a draft constitutional law on the modernization of the institutions of the 5th Republic. Article 31 officially introduces a new **Defender of the Rights of Citizens (DRC)**: The APT has been informed that this new institution might be in place by 2009 and it is likely that the mandate-holder will be the current Mediator of the Republic. The idea is for the General Inspector to be designated and initiate its activities in 2008, and to bring it under the jurisdiction of the Defender at a later stage. The General Inspector would become one of the deputies of the Defender.

National consultations

NGOs such as ACAT-France, AI- France and others publicly expressed their concerns about the draft law establishing the General Inspector. They identified several key shortcomings in the law, including: the process of nomination of the General Inspector for Places of Deprivation of Liberty; guarantees of independence of the proposed institution; composition of its staff; regularity and preventive approach of its visits' program; restriction of visits only to the territory of France; and serious limitations on the right to visit places of detention and of access to information [contained therein](#).

Taking into account the concerns of NGOs and civil society, the National Assembly adopted several amendments to the legislation, particularly regarding the professional composition and the process of designation of the proposed institution. Modifications were also made to lower the restrictions on visiting places of detention. Nonetheless, concerns still exist that the law does not entirely comply with the NPM criteria, as stipulated in the OPCAT text. Irrespective of the concerns of the APT and national NGOs, the amended law was finally approved by the Senate on its second reading.

With France's ratification, the General Inspector for Places of Deprivation of Liberty acts as the NPM ([statement by the Ministry of Foreign Affairs](#)).

Other issues

In addition, in association with the French National Consultative Commission of Human Rights and the National Bar Council of France, the Ombudsman of the French Republic and the Council of Europe's Commissioner for Human Rights hosted a one-day meeting focussing on the deprivation of liberty and respect for human rights in Paris on 18 January 2008. The central focus of this discussion was the Optional Protocol to the UN Convention against Torture (OPCAT). However, inevitably there was detailed discussion at this meeting about France's proposed NPM.

NPM functioning

Composition

The Inspector is nominated for 6 years by the President, on the basis of proposals made by parliamentary commissions, and his mandate cannot be renewed. On 23 May 2008 the Ministry of Justice proposed the name of **Jean-Marie Delarue** to the Presidents of the Senate and National Assembly to assume the mandate of the General Inspector. After advice of the parliamentarians, the Inspector was nominated by decree by the President of the French Republic on 11 June 2008. Jean-Marie Delarue is State Counselor (*Conseiller d'Etat*) and was the president of the national follow-up commission on pre-trial detention.

The General Inspector is assisted by inspectors who are recruited on the basis of their professional skills. According to its decision from 2 September 2008, the General Inspector appointed 21 inspectors, of whom three are women.

Monitoring powers and guarantees

The General Inspector can visit at any time any place where people are deprived of their liberty on the territory of the Republic following a decision of a public authority as well as any health

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France

Ratification: 11 November 2008 – **NPM designated:** **General Inspector of Places of Deprivation of Liberty (NEW INSTITUTION)**

Updated on 5 May 2009

	<p>institution where patients are hospitalized without their consent. The authorities can object to a visit of the Inspector and his staff only on imperious and compelling grounds of national defence, public safety, natural disasters or serious disorder in the place to be visited. When entry is denied, the authorities must provide the Inspector with justification for their objection and to propose to postpone an alternative date. The authorities must inform the Inspector as soon as the exceptional circumstances cease. This provision is a transposition of Article 14§2 of the OPCAT, which only foresees such a restriction on the Subcommittee on Prevention of Torture and not on the NPM. The Prime Minister, members of the Government, members of the Parliament, Ombudsman (<i>Médiateur de la République</i>) and other representatives of specific administrative authorities are entitled to present queries and complaints to the Inspector, who can also act on his own initiative. As of the time of the writing, this situation did not occur.</p> <p>The first visit to a place of detention took place in July 2008, and various visits took place since that date. In November and December 2008, the General Inspector published its first recommendations in the Official Gazette (see below).</p> <p>Finances</p> <p>The Ministry of Justice had first announced in the media that the new General Inspector would be assisted by 18 staff and would be granted an annual budget of 2.5 million EUROS. Other sources indicated that the new institution will comprise 40 staff, albeit with the same budget.</p>
Legal framework	<p>General Inspector law, n°2007-1545 of 30 October 2007 (French version) General Inspector law (English unofficial version) of 30 October 2007 General Inspector implementation decree n° 2008-246 of 12 March 2008 Decree nomination Jean-Marie Delarue of 13 June 2008</p> <p>OPCAT ratification law n°0176 on 30 July 2008</p>
Recommendations and reports	<p>NPM website Annual report 2008 and Annexes Annual report 2008 Recommendations 17 november 2008 - Choisy-le-Roi detention centre Recommendations 24 December 2008 - Villefranche-sur-Saône detention centre</p>

OPCAT Country Status – Europe and Central Asia

Georgia

Ratification: 9 August 2005 - **NPM establishment:** due to have taken place before 22 June 2007

Updated on 19 June 2009

Background information	<p>Population:4,661,473 Area (sq km):69,700 Prison population: 18 170 Number of prisons:17</p> <p>Georgia was forcibly incorporated into the USSR until the Soviet Union dissolved in 1991. An attempt by the incumbent Georgian government to manipulate national legislative elections in November 2003 touched off widespread protests that eventually led to new elections in early 2004 that swept Mikheil Saakashvili into power along with his National Movement Party. Progress on reforms and democratization has been complicated by two civil conflicts in the breakaway regions of Abkhazia and South Ossetia. These two territories remain outside the control of the central government and are ruled by de facto, unrecognized governments, supported by Russia.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>Commissioner for Human Rights (Council of Europe) published recommendations in 2003, following its visit in 2000 Commissioner HR recommendations (2003)</p> <p>Last CPT visit March 2007. CPT reports</p> <p>CAT considered Georgian report in May 2006 CAT Concluding observations</p> <p>Report of the UN Special Rapporteur on torture, Manfred Nowak - Mission to Georgia (E/CN.4/2006/6/Add.3)</p>
NPM designation process	<p>A whole series of round-table events and other meetings have been held in Georgia in the period 2006-2008 to examine possible implementation of the OPCAT, which Georgia acceded to in August 2005. Regrettably this process has been frustrated by the absence of any clear point of responsibility for implementing the instrument on the part of the Georgian authorities. Although the latter should have established its NPM by 22 June 2007, no such mechanism was in place at the time of writing. In contrast, Georgian civil society has exerted considerable effort to develop its vision of the country's NPM.</p> <p>To coincide with the deadline by which Georgia was meant to have put in place its NPM, the APT in collaboration with PRI and the Tbilisi branch of Global Initiative on Psychiatry held a round-table in Tbilisi on 22 June 2007 aimed at assessing the preparedness of the Georgian authorities. The event, which was titled '<i>Is Georgia ready for the OPCAT?</i>' and financially supported by the European Union as part of a three-year torture prevention project, concluded that the authorities had paid insufficient attention to this matter and had not considered how they would implement the OPCAT in practice. Nevertheless, government representatives who attended the meeting assured the participants that the matter would be given top priority. An inter-agency council was set up for this purpose, which, regrettably, only met intermittently to discuss the issue.</p>
NPM options	<p>Progress continued to be slow throughout 2008 until early 2009 when the government prepared a draft law which was sent to parliament in April 2009. At the time of writing the draft law was said to be under discussion by the various relevant committees in the latter institution. The draft law designates the Public Defender of Georgia as the NPM, envisaging that a so-called Special Preventive Group be established within it. This subunit will comprise representatives from the Public Defender's office as well as experts drawn from society.</p>
SPT communications	<p>Official correspondence to the SPT on the designation of the NPM (24 October 2008)</p>
Legal framework	<p><i>No NPM establishment law has been adopted yet.</i></p> <p>NGOs proposals : Georgia 1, Georgia 2, Georgia 3, Georgia 4</p>

Shaded boxes: States Parties to the OPCAT

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Germany

Ratification: 04 December 2008 - **NPM designation:** postponement under Article 24

Updated on 19 June 2009

<p>Background information</p>	<p>Population: 82,422,299 Area (sq km): 357,021 Prison population: 72 259 Number of prisons: 195</p> <p><u>Consideration by international and regional human rights mechanisms:</u></p> <p>CAT considered the report of Germany in 2004 CAT Concluding observations CPT visited Germany in 2005 CPT visit report Commissioner for Human Rights (Council of Europe) visited Germany in 2007 Commissioner HR visit report (2007)</p> <p><u>Federal Structure:</u> Germany is divided into 16 federal States (Länder)</p>
<p>OPCAT ratification and NPM designation processes</p>	<p><u>Specific challenges relevant to federalism</u> To implement the Länder Commission, there first must be an agreement (staatsvertrag) between the Länder, and then each Länder must legislate to enable the Commission to function. If there were a dispute between one Länder and the Commission, the 16 Ministers of Justice of the Länder would meet to discuss and resolve the issue. Ultimately, however, there is no way to legally force a Länder to comply with recommendations.</p> <p><u>Jurisdiction</u> In Germany, the sub-federal Governments, the “Länder” have areas of exclusive jurisdiction, as does the Federal Government, while other areas are overlapping “competitive” jurisdiction. In areas such as mental health and police, the Länders have exclusive jurisdiction. For such facilities, then, Länder consent is mandatory for OPCAT implementation.</p> <p><u>OPCAT process</u> Germany signed the Optional Protocol at the UN Treaty Event in New York on 20 September 2006. Prior to ratification, the Federal and Länder authorities met to assess the situation for the implementation of the OPCAT and concluded that Germany does not presently have organizations that would meet the NPM requirements of OPCAT. Therefore, the question was whether to establish a single federal institution, sixteen separate Länder institutions, or a combination of both. The Länder did not want to give the Federal government exclusive competence in this area, nor did they want sixteen separate institutions. Consequently, the favoured model was to establish two different monitoring bodies, one for places of detention under federal jurisdiction (Commission for the Prevention of Torture), the other for facilities under the jurisdiction of Germany’s 16 Länder (Federal Centre for the Prevention of Torture). Therefore there would be two German institutions, the Länder Commission for all non-federal institutions, and an individual Ombudsman for all federal institutions. Germany’s two chambers of parliament, the Bundestag and the Bundesrat, approved legislation ratifying the instrument in February and July 2008 respectively. On 2 September 2008, the law authorizing the ratification was published in the Official Gazette and the country formally deposited its ratification of the instrument on 4 December 2008, with a declaration under article 24 of the OPCAT: <i>“The distribution of competences within the Federal Republic of Germany means that a treaty between the Länder (federal states), which requires parliamentary approval, is needed in order to establish the national preventive mechanism at Länder level. Because of this requirement, Germany shall postpone the implementation of its obligations under Part IV of the Optional Protocol. The Subcommittee will be informed as soon as possible of the date from which the national prevention mechanism is operational.”</i></p>
<p>NPM options</p>	<p><u>Existing monitoring mechanisms</u> Germany does not have any existing visiting bodies which could ensure complete geographic coverage of all places of detention in the country.</p> <p><u>Proposed NPM options</u> As a result of the situation described above, it is foreseen that two different monitoring bodies will be</p>

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Germany**Ratification:** 04 December 2008 - **NPM designation:** postponement under Article 24

Updated on 19 June 2009

	<p>established for the purposes of the OPCAT, one for places of detention under federal jurisdiction, the other for facilities under the jurisdiction of Germany's 16 <i>Länder</i> or regions.</p> <p>According to the official legal commentary on the draft legislation establishing its NPM, it is envisaged that a single monitoring mechanism responsible for detention facilities of the <i>Länder</i> will be established, a so-called Commission for the Prevention of Torture (<i>Kommission zur Verhütung von Folter</i>) sometimes referred to as the Commission of the Regions (Länderkommission). A second body, a so-called Federal Centre for the Prevention of Torture (<i>Bundesstelle zur Verhütung von Folter</i>) will be established with responsibility for all federal detention facilities. The official legal commentary on the legislation lists the different types of detention facilities which will be covered by these bodies, which also includes less typical places of detention such as locked facilities for children and youths, homes for the elderly and care homes.</p> <p>Composition</p> <p>The bodies will not be particularly well resourced. The Commission for the Prevention of Torture will consist of four part-time members, while the Federal Centre for the Prevention of Torture will comprise just one member. Both mechanisms will be supported by a small secretariat based at the Centre for Criminology (<i>Kriminologische Zentralstelle</i>) in Wiesbaden.</p> <p>Financial resources</p> <p>According to the legislation, the annual cost of the NPM should not exceed 300, 000 EURO, which is described in the official legal commentary on the legislation as “sufficient” (“ausreichend”).</p> <p>Other issues</p> <p>The envisaged NPM has elicited a significant amount of domestic and international criticism owing to the fact that it largely lacks the necessary human resources to comply with its obligations under the OPCAT and that it sends negative signal regarding what is acceptable under OPCAT to other countries in the process of putting in place their national NPMs.</p> <p>In March 2007 the APT wrote to the Minister of Foreign Affairs Dr Frank-Walter Steinmeier in order to elicit a response to its letter of 22 September 2006, highlighting its concerns regarding the proposed NPM. The organization received a response from the Director General for the United Nations and Global Issues, of the Ministry of Foreign Affairs Ambassador Dr. Peter Wittig dated 4 June 2007 which confirmed that the German authorities intended to proceed with the proposed NPM structure. The letter also stated: <i>“I am confident that this mechanism will prove to be efficient and will thus enable Germany to meet its obligations under the [OPCAT]. It is, however, envisaged to continue monitoring the functioning and working methods of the national preventive mechanism, with particular views of the Federal Commissioner and the experts from the Regional Commission themselves, in order to ensure that any necessary changes can be made in a timely manner.”</i> Despite these reassurances there remain doubts that the proposed NPM will work effectively in practice.</p> <p>The APT also used its participation in a one-day seminar on the subject of OPCAT implementation organized by the German Institute for Human Rights on 15 February 2008 in Berlin to reiterate its concerns. Similar concerns have also been voiced by other relevant actors, particularly the German Institute for Human Rights, which published its position in this respect in a public document, <i>Stellungnahme zum Stand der Verhandlungen zur deutschen Ratifikation des Zusatzprotokolls zur UN-Anti-Folter-Konvention</i>, in January 2007.</p>
NPM functioning	<p>Composition</p> <p>Even though Germany made a declaration under Article 24 of the OPCAT, postponing the establishment of its NPM, the head and support staff of the Federal Centre for the Prevention of Torture were recruited in the first quarter of 2009. The head of the institution is a former judge and prison governor. The other mechanism, Commission for the Prevention of Torture, is likely to take more time to be established.</p>
Legal framework	OPCAT Ratification Law

OPCAT Country Status – Europe and Central Asia

Iceland

Signature: 24 September 2003 - **Ratification:** under consideration

Updated on 30 May 2008

<p>Background information</p>	<p>Population: 299,388 Area (sq km): 103,000 Prison population: 119 Number of prisons: 5</p> <p>The minister of justice heads the police force, while the national commissioner of police administers and runs police operations that require centralized coordination among various offices. Various district chiefs of police have responsibility for law enforcement in their areas, investigate criminal offences, and have prosecution powers.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>CAT considered Iceland in May 2008 CAT Concluding observations CPT visited Iceland in 2004 CPT visit report Commissioner for HR (Council of Europe) visited Iceland in 2005 Commissioner HR visit report (2005)</p>
<p>OPCAT ratification and NPM designation processes</p>	<p>There has been no official confirmation about Iceland's intention to implement the OPCAT. Iceland does, however, have a Parliamentary Ombudsman and an Ombudsman for Children, which is relatively positive for a country of just 300 000 inhabitants. It is, therefore, not unfeasible that such institutions may be employed as NPMs for the purposes of OPCAT.</p> <p>On 7 March 2007 the APT wrote to Valgerður Sverrisdóttir, the Minister of Foreign Affairs of Iceland to obtain information about the country's intentions in relation to establishing an NPM and when the country envisages ratifying the OPCAT. To date, there has been no response to the letter.</p> <p>The APT learned in late July 2007 that national NGOs were informed by the Ministry of Foreign Affairs that the government plans to ratify the OPCAT during the upcoming Parliamentary 2007-2008 session. According to this information, the Parliamentary Ombudsman does not appear to have been formally approached to assume the role of Iceland's NPM, nor is civil society aware of any other initiative regarding the establishment of an NPM.</p> <p>It is also relevant to note that during its examination of Iceland's third periodic report in May 2008 the UN Committee against Torture encouraged the country to proceed to its ratification of the OPCAT at the earliest possible date. Moreover, the Committee a series of recommendations aimed at enhancing the monitoring capacities of an existing visiting body, the Office of the Parliamentary Ombudsman, through the allocation of appropriate human and financial resources.</p>
<p>NPM options</p>	<p>The APT has been informed that the Ombudsman has not been approached by the government regarding the possibility of assuming the NPM mandate.</p> <p>In addition, the APT has been informed that the government is considering the ratification of the OPCAT. Even if the government recognized that some monitoring of places of detention activities has been carried out by the Ombudsman, these activities are not regular. The Ministry of Justice is apparently considering creating a new institution or committee that could assume the NPM mandate and comply with the OPCAT criteria. The reflection is ongoing on the appointment, composition and selection of the members of the new institution as well as the authority of the NPM.</p>
<p>Legal framework</p>	<p><i>No NPM establishment law has been adopted yet.</i></p>

OPCAT Country Status – Europe and Central Asia

Ireland

Signature: 02 October 2007 - **Ratification:** under consideration

Updated on 22 June 2009

Background information	<p>Population: 4,062,235 Area (sq km): 68,890 Prison population: 3 653 Number of prisons: 14</p> <p>The Republic of Ireland is a multiparty parliamentary democracy with an executive branch headed by a prime minister, a bicameral parliament, and a directly elected president. Prison conditions are generally considered to meet international standards, though work and sanitation conditions remained poor in some prisons. Human rights groups have condemned the Central Mental Health Hospital in Dundrum, the country's only secure hospital for prisoners with mental disabilities, because of understaffing and poor infrastructure. In most cases the government permits prison visits by domestic and international human rights observers but requires prior appointments for such visits. The US State Department reported no such visits during 2005. The national police have primary responsibility for internal security but are generally an unarmed force; therefore, the army, under the effective civilian control of the minister for defence, may act in support of the police when necessary.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>CPT visited Ireland in 2006 CPT visit report</p> <p>Commissioner for Human Rights (Council of Europe) visited Ireland in 2007 Commissioner HR visit report (2007)</p>
OPCAT ratification and NPM designation processes	<p>Early in 2007, an inter-ministerial consultation had taken place and the Minister for Justice prepared a memorandum to the Irish Government, calling for the signature of the OPCAT. The Minister for Justice, Equality and Law Reform also stated in the Dáil as early as November 2005 that the question of Ireland's ratification of the OPCAT was being constantly reviewed in light of prevailing circumstances and in the context of the ongoing assessment and prioritisation of Ireland's international commitments. He stated the Department of Justice was reviewing national legislation to ascertain whether legislative changes would be required before signature and ratification of the OPCAT, and that consultations had commenced with various Departments including the Departments of Health and Children and Education and Science in relation to arrangements for the inspection of institutions for which they are responsible. The Minister for Foreign Affairs reiterated this position in the Dáil in June 2006.</p> <p>On 7 September 2007 the Ministry of Foreign Affairs of Ireland announced that the country intended to sign the OPCAT, which it subsequently did on 2 October 2007. This important announcement coincided with the first ever national meeting on the OPCAT, which was organized on the same day by the Irish Council for Civil Liberties (ICCL). The round-table event took place at the Law Society of Ireland, where a range of speakers addressed the issue. These included the Director of the ICCL, Mark Kelly, the then President of the international Subcommittee on Prevention, Silvia Casale and a Commissioner of the Irish Human Rights Commission, Suzanne Egan. An APT staff member also spoke at this event, which was designed to raise awareness about the OPCAT as a torture prevention instrument in Ireland and to examine the issue of establishing a National Preventive Mechanism in the country.</p> <p>Discussions concerning the possible implementation of the instrument re-commenced in 2008. On 7 May 2008 the Irish Human Rights Commission hosted a half-day roundtable discussion at the Royal Irish Academy on the various mechanisms which might serve as the country's future NPM. The meeting carried on from where 2007's discussion left off and examined more concretely various options for an NPM. At the meeting the Ministry for Justice, Equality and Law Reform also agreed to be the institution which would take the lead on the issue of how the instrument could be implemented in Ireland. At the time of writing it is unclear how much progress has been made in this regard since the May 2008 round-table meeting in Dublin.</p>
NPM options	<p><u>Existing monitoring mechanisms</u></p> <p>Inspectorates already exist for most types of place of detention in Ireland, but each lacks some of the powers and protections or the requisite degree of independence as required by the OPCAT. These include the Irish Human Rights Commission, Office of the Ombudsman for Children, Garda Síochána Ombudsman Commission, Garda Síochána Inspectorate, Inspectorate of Mental Health Services, Chief Inspectorate of Social Service Bodies, and the Inspectorate of Prisons and Places of Detention. At the 7 September 2007 round-table the ICCL proposed that an audit of these existing mechanisms be undertaken in order to determine their strengths and</p>

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OPCAT Country Status – Europe and Central Asia

	<p>weaknesses in relation to the OPCAT, which in turn would help inform the necessary discussion on the country's NPM.</p> <p><u>Possible NPM options</u></p> <p>Although Ireland has a number of existing detention monitoring mechanisms (see above) they vary in the degree to which they are compliant with the OPCAT. The May 2008 event addressed this issue of compatibility and mapped out various possible options for Ireland, including an NPM comprising of several existing monitoring bodies, one of which could act as some form of central coordinating focal point.</p>
Legal framework	<i>No NPM establishment law has been adopted yet.</i>

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OPCAT Country Status – Europe and Central Asia

Italy

Signature: 20 August 2003 - **Ratification:** under consideration

Updated on 16 May 2008

Background information	<p>Population: 58,133,509 Area (sq km): 301,230 Prison population: 61,721 Number of prisons: 222</p> <p>Four separate police forces report to different ministerial or local authorities. The national police and the financial police fall under the jurisdiction of the interior and finance ministries, respectively. The Ministry of Defense controls the carabinieri, a military security force; however, the Ministry of Interior assumes control of carabinieri and financial police units when they perform law enforcement functions. Under exceptional circumstances, the government may call on the army to provide security in the form of police duty in certain local areas, thereby freeing the carabinieri and local police to focus on other duties. As of 2005, the government permitted visits to prisons by independent human rights organizations, parliamentarians, and the media. Several municipalities appoint independent ombudsmen to promote the rights of detainees and facilitate access to health care and other services.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>CAT considered Italy in 2007 CAT Concluding observations</p> <p>CPT visited Italy in 2006 CPT visit report</p> <p>Commissioner for Human Rights (Council of Europe) visited Italy in 2005 Commissioner HR visit report (2005)</p>
OPCAT ratification and NPM designation processes	<p>There have been various initiatives to promote the ratification and implementation of the OPCAT in Italy. As far back as 2005 a workshop meeting was organized by the NGO, Antigone, to promote ratification. More recently, in December 2006, a national workshop took place, co-organized by the OHCHR and an NGO network, <i>Comitato per la Protezione e Promozione dei Diritti Umani</i>, on the establishment of a National Human Rights Institution in Italy. It was proposed that Italy's NPM could be included as a part of such a larger human rights mechanism.</p> <p>A legislative initiative has also been undertaken in this connection. In April 2007 the Italian lower chamber, Chamber of Deputies, approved a draft law establishing a so-called National Commission for the Promotion of Human Rights. According to the draft legislation, this institution would include a sub-unit a "Defender of Rights of People Deprived of their Liberty" with the mandate to monitor places of detention as the NPM. The APT has translated the draft legislation into English and it is currently in the process of commenting on the text from an OPCAT perspective.</p> <p>In the light of approval of the draft law by the lower chamber, Italy's upper chamber, the Senate should now consider and approve the text. If amended, the draft law will be returned to the lower chamber for further approval. However, to date, the Senate has not examined the draft law.</p> <p>On 16 November 2007 an APT delegation travelled to Rome in order to discuss this legislative initiative with various relevant actors, including members of three key parliamentary committees. From these meetings and the change in government in 2008 it looked increasingly unlikely that the draft legislation would successfully proceed through the legislative process. Nonetheless, the APT will continue to monitor developments at the national level.</p>
NPM options	Draft Law
Legal framework	<i>No NPM establishment law has been adopted yet.</i>

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Kazakhstan

Ratification: 22 October 2008 – NPM designation: pending

Updated on 19 June 2009

Background information	<p>Population: 15,3 million Area (sq km): 2, 717 million Prison population: 51,538 Number of prisons: 95</p> <p><u>Consideration by international and regional human rights mechanisms:</u> CAT considered Kazakhstan's report in November 2008. CAT Concluding observations</p>
NPM designation process	<p>Following Kazakhstan's signature of the OPCAT in September 2007, the prospect of ratification of the OPCAT grew as 2008 progressed. In March 2008, during its statement before the Human Rights Council, the Minister of Foreign Affairs of Kazakhstan, Marat Tazhin, informed that the participants that "(...) <i>they are finalizing international legal procedures on ratification on the Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention against Torture (...)</i>". Shortly afterwards, on 3 June 2008 the Senate, the upper house in the Kazakh parliament, passed legislation to ratify the OPCAT, which was approved by President Nazarbayev on 25 June 2008. On 22 October 2008, Kazakhstan formally became a State Party to the OPCAT.</p> <p>In November 2008, the CAT recommended Kazakhstan to " (...) <i>speedily establish or designate a National Preventive Mechanism for the prevention of torture and take all necessary measures to ensure its independence, in accordance with the provisions of the Optional Protocol of the Convention.</i>"</p> <p>Kazakhstan's much anticipated ratification of the OPCAT on 22 October 2008 triggered the beginning of the one-year deadline by which the country should establish or designate its NPM. In order to prompt a national discussion about Kazakhstan's NPM a host of interested organizations co-sponsored a one-day round-table meeting on this issue on 20 November 2008 in the capital, Astana. These included the Representative Office of OHCHR in Central Asia, British Foreign and Commonwealth Office, Embassy of the Republic of Germany in Kazakhstan, Kazakh Bureau for Human Rights and Rule of Law, Freedom House, National Centre for Human Rights and the APT.</p> <p>Around 40 representatives from the government, civil society and the so-called national anti-torture working group attended the meeting. This latter thirteen-person body was established earlier in 2008 under the auspices of the Commissioner for Human Rights or Ombudsman's Office to examine the use of torture and other forms of ill-treatment in the country, including the implementation of the OPCAT. The working group comprises representatives from the Ministries of Interior and Justice, Prosecutor's Office, Committee of National Security, Commission for Human Rights, National Centre for Human Rights as well as three NGOs. While various possible NPM structures deemed appropriate for Kazakhstan were discussed during the meeting, a sizeable number of the participants appeared to be of the opinion that a so-called 'Ombudsperson plus' model might be the most applicable for the Kazakhstan context.</p> <p>This discussion was continued at a two-day meeting which took place in Astana on 26-27 February 2009 titled '<i>The Prevention of Torture in the Republic of Kazakhstan: From Discussion to Practical Implementation</i>' which looked at the UN Committee against Torture's examination of Kazakhstan's second periodic report from November 2008 as well as the implementation of the OPCAT.</p>
NPM options	<p>One proposal that emerged from the February 2009 was that the 14 oblast-based Public Monitoring Commissions be used in tandem with a coordination body based in the office of the Commissioner for Human Rights as the NPM. Further meetings on the topic are envisaged in the course of 2009.</p>
Legal framework	<p><i>No NPM establishment law has been adopted yet.</i></p>

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Kyrgyz Republic (Kyrgyzstan)OPCAT accession: 29 December 2008 – NPM designation:
under consideration

Updated on 19 June 2009

Background information	<p>Population: Approximately 5.3 million Area (sq km): 198, 500 Prison population: 7 199 Number of establishments / institutions: 17</p> <p><u>Consideration by international human rights bodies</u></p> <p>CAT examined Kyrgyz Republic's report in November 1999 Concluding observations</p>
NPM designation process	<p>Since late 2004 the APT has visited Kyrgyzstan on four occasions for the purpose of promoting the OPCAT. In this period there has been distinct progress in this regard thanks to the ongoing efforts of local actors (see below). As a result of these activities the Kyrgyz Parliament passed legislation ratifying the instrument in February 2008, which was later approved and signed by President Bakiyev in April the same year. Kyrgyzstan deposited its accession to the OPCAT on 29 December 2008.</p> <p>In the period 2007-2008 there have been various initiatives to address the issue of implementation of the instrument. In anticipation of ratification later this year the Office of the High Commissioner for Human Rights' Representative Office (OHCHR) in Central Asia and the Kyrgyz Ombudsman's Office co-sponsored a one-day round-table event in Bishkek on 11 July 2008 designed to promote the effective implementation of the OPCAT in Kyrgyzstan. This was the third high-profile event devoted to the OPCAT in the country. The first two took place in Bishkek on 16-17 October 2007, which were co-sponsored by OHCHR in Central Asia as well as the Organization for Security and Co-operation in Europe's Academy in Bishkek. These two round-table events were also devised to promote the ratification and effective implementation of the OPCAT in Kyrgyzstan.</p> <p>A NPM option had been devised by a civil society comprised coalition, <i>Voice of Freedom</i>, and was consulted with various relevant actors. In the wake of the July 2008 round-table an inter-ministerial-civil society work group was established for this purpose under the auspices of the Ombudsman's Office, although it was unclear how often the working group had met since July 2008. A follow-up event took place in Bishkek on 16 April 2009 in order to examine the draft legislation establishing the NPM. The meeting was being co-sponsored by the APT, Ombudsman's Office, OHCHR Central Asia and OSCE-ODIHR.</p> <p>For the occasion two members of the UN Subcommittee on Prevention of Torture, Marija Definis Gojanovic and Zdenek Hajek, attended the event to lend their advice to the ongoing process. Moreover, Ivan Selih, a Senior Advisor at the Slovenian Ombudsman's Office travelled to Bishkek to share his country's experiences of having established a civil society-Ombudsman hybrid NPM option in 2008. Although the draft NPM legislation was comprehensive and largely in compliance with the provisions of the OPCAT text, the proposed option (see below) was ultimately rejected by certain key participants. The latter felt that there would be problems in promoting the legislation in parliament and in securing finance for the institution. The Kyrgyz Ombudsman numbered among the influential participants who had doubts about the NPM proposal. It therefore remains to be seen which new proposals emerge in the coming months.</p>
NPM options	<p>As a result of the process of consultation there emerged a so-called 'Ombudsperson plus' type NPM structure, involving the latter institution and civil society. The proposed option envisaged a multi-body centralized arrangement with regional representation. The key centralized bodies comprised the Ombudsman's Office and a newly created National Preventive Council and Centre for Monitoring and Analysis, all of which would be assigned specific functions. At the regional level so-called Monitoring Groups would undertake the day-to-day monitoring. However, as the proposal was ultimately rejected during the April 2009 event, an alternative NPM option will have to be found.</p>
Legal framework	<p><i>No NPM establishment law has been adopted yet.</i></p>

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Liechtenstein

Ratification: 03 November 2006 - NPM designated: CORRECTIONS COMMISSION

Updated on 01 April 2009

Background information	<p>Population: 33,987 Area (sq km): 160 Prison population: 10 Number of prisons: 1</p> <p>The Principality of Liechtenstein is a constitutional monarchy with a parliamentary government. The parliament nominates and the monarch appoints the members of the government. A two-party coalition government was formed after parliamentary elections in March 2005. The security forces are composed of the regular and auxiliary police under the interior ministry. There is no standing military force. By agreement with Austria, some persons imprisoned by Liechtenstein are held in Austrian prisons.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>Last CPT visit: February 2007 (CPT reports) CAT considered Liechtenstein in May 1999 CAT Concluding observations Commissioner for Human Rights (Council of Europe) visited Liechtenstein in 2005 Commissioner HR visit report (2005)</p>
OPCAT ratification process	<p>In late June 2006 the APT received a letter from the Office for Foreign Affairs of the Principality of Liechtenstein informing it that: “<i>We are currently preparing the ratification of OPCAT and hope to finalize this process as soon as possible.</i>” The country’s ratification of the OPCAT followed on 3 November the same year.</p>
NPM designation and establishment process	<p>The APT has been informed that the new Corrections Commission was appointed as the NPM in March 2008, in the framework of the revision of the code on the serving of sentences (article 17).</p>
NPM functioning	<p><u>Composition</u></p> <p>The Inspection Commission is composed of an interdisciplinary group of five experts: one lawyer, one medical doctor, two persons with practical experience in the penal system and probation service and one university professor. The law states that from the 5 members, at least two should be women and two should not be civil servants, which is the case in practice. The members are nominated for four years by the government which decides on their wages (based on the civil servants wages). They are independent in their functions and, in cases of abuse of office the government can dismiss the members of the Commission.</p> <p>The current composition includes legal experts, medical experts, probation officers as well as persons with experience in penal execution.</p> <p><u>Monitoring places of detention</u></p> <p>The members have access to all documents visits and the law foresees that the Commission should carry out a visit every three month, without any notice. The Commission could carry out additional visits and are able to have private interviews. After the visit, the members of the Commission should send their report to the government within 14 days, with some recommendations if necessary. The members of the Commission should respect the confidentiality in the framework of their work. The law also specifies that the members are not obliged to communicate the name of the people their interviewed, as well as to denounce any criminal offence they acknowledge in their functions.</p> <p>The visiting mandate of the Commission was initially limited to the prison of Liechtenstein. The question arising at that the beginning of their activities was if the commission was able to also visit other places of deprivation of liberty. Upon request of the APT, the President of the Commission informed the APT that they could also visit the two police holding cells since they are located in the prison of Vaduz. The APT was informed in October 2008 that the mandate of the Commission was amended in order to be able to visit all places of detention.</p> <p>According to the information facilitated to the SPT, and as of October 2008, the NPM carried out three visits to the national pre-trial detention facility.</p> <p><u>Making public and policy recommendations</u></p> <p>It is reported that a written and confidential report is submitted to the Government after each visit. It is expected that the NPM will soon submit its fourth visit report as well as a public annual report.</p>

Shaded boxes: States Parties to the OPCAT

Unshaded boxes: States that have signed the OPCAT or are due to sign it in a near future

Liechtenstein

Ratification: 03 November 2006 - **NPM designated:** CORRECTIONS COMMISSION

Updated on 01 April 2009

SPT communications	Official correspondence to the SPT designating the NPM
Legal framework	Article17

Luxembourg**Signature:** 13 January 2005 - **Ratification:** under consideration

Updated on 05 December 2008

Background information	<p>Population: 474,413 Area (sq km): 2,586 Prison population: 768 Number of prisons: 2</p> <p>Luxembourg is a constitutional monarchy with a democratic, parliamentary form of government. The grand ducal police and its investigative branch, the judiciary police, are responsible for law enforcement and maintenance of order within the country. The police force is under the direction of the Ministry of Justice. Neither corruption nor impunity was a problem. A special police body is in charge of investigating cases of police abuses. Police officers are required to attend training at the police academy, at least every two years.</p> <p>Consideration by international and regional human rights mechanisms</p> <p>CAT considered Luxembourg in 2007 CAT Concluding observations CPT visited Luxembourg in 2003 CPT report visit Commissioner for Human Rights (Council of Europe) visited Luxembourg in 2004 Commissioner HR visit report (2004) Luxembourg report was examined by the Universal Periodic Review of the Human Rights Council on December 2008 National report</p>
OPCAT ratification and NPM designation processes	<p>The decision to move towards the OPCAT ratification was not immediate after Luxembourg's signature in 2005. For instance, in late March 2007 the APT wrote to the Minister of Foreign Affairs and Immigration, Jean Asselborn, to obtain information about the country's intentions in relation to establishing an NPM and when the country envisages ratifying the OPCAT, without any response. In May 2007, Luxembourg replied to the CAT information request on the OPCAT ratification process "181. Ratification of the Optional Protocol is not considered to be a matter of priority, since the Protocol institutes arrangements quite similar to those under which Luxembourg is already operating pursuant to the above-mentioned Council of Europe instruments."¹²</p> <p>Civil society organizations have also been active promoting the OPCAT in Luxembourg. For instance, in their shadow report to Luxembourg's examination by the CAT in May 2007, the NGOs, Luxembourg ACT and Info Prison, stated: "[A]ccording to the information available to us, no single practical measure has yet been taken with a view to Luxembourg's ratifying this instrument. Neither, despite ... statement of good intentions, has there been any progress on the composition of and establishment procedures for a national torture prevention mechanism, as provided for in the Protocol. ACAT had called on the Luxembourg Government to help promote the Protocol and set a good example by seeking to form part of the first twenty states to ratify it." The organizations continued: "We deplore the fact that a small country with not insignificant resources like Luxembourg has not made a greater effort in the field of torture prevention by bringing to completion the process set in motion by the signing of the Optional Protocol."¹³ In addition, in December 2007, ACAT-Luxembourg followed on this shadow report and wrote to the Minister of Justice in the view to obtaining more information about the NPM designation.</p> <p>However, the government started to envisage some possible implementation of the OPCAT. In May 2007, the government announced in its speech addressed to the Nation, that the Ombudsman (<i>Médiateur de la République</i>) would assume the task of monitoring prisons¹⁴.</p> <p>On 28 February 2008, the government requested from the National Consultative Human Rights Commission an opinion on the draft bill ratifying the OPCAT, and designating the Ombudsman (<i>Médiateur de la République</i>) as the NPM. Few days later, on 13 March 2008, the OPCAT draft law entered in the Congress and is still under consideration.</p> <p>In November 2008, the National Consultative Human Rights Commission published its opinion (Opinion Consultative Commission), in which the institution regrets not having been consulted by the government prior to the drafting of the law.</p>

¹² UN Doc. CAT/C/LUX/Q/5/Rev.1/Add.1, 23 March 2007 – paragraph 181.¹³ *Observations relating to the submission of Luxembourg's 5th periodic report to the Committee against Torture*, 8 February 2007 – pages 10-11. http://www.gouvernement.lu/salle_presse/actualite/2007/05/09etatnation/index.html¹⁴ *Déclaration du gouvernement sur la situation économique, sociale et financière du pays en 2007* : http://www.gouvernement.lu/salle_presse/actualite/2007/05/09etatnation/index.html**Shaded boxes:** States Parties to the OPCAT**Unshaded boxes:** States that have signed the OPCAT or are due to sign it in a near future

OPCAT Country Status – Europe and Central Asia

	<p>In December 2008, in the framework of the UPR process, the APT met with the representative from the Foreign Affairs Ministry to raise APT concerns regarding the NPM law designating the Ombudsman as the NPM. Concerns raised by civil society organisations and the Consultative Council received a positive reception within relevant Ministries, and it is expected that the law will be amended in order to comply with the OPCAT criteria, more particularly adopting a broader definition of places of detention. The Parliament will start to discuss the proposal in the coming months, once the State Council (Conseil d'Etat) will publish its opinion on the NPM draft law.</p> <p>It is expected that Luxembourg ratifies and designates its NPM in 2009.</p>
NPM options	<p>The draft law under consideration by the Parliament not only ratifies the OPCAT, but also designate the Ombudsman as the NPM. As far as the APT is aware, no other institution or organization monitors places of detention in Luxembourg. The Ombudsman was created in 2004 and is designated for 8 years under proposal from the Parliament and his team is mainly composed by lawyers (4).</p> <p>In order to contribute to the process of examination of the draft law, the APT sent commentaries to the Commission in charge of the examination of the text, to the relevant Ministries, to the National Consultative Human Rights Commission and civil society organisations. As a matter of fact, the Consultative Commission raised the same concerns as the APT in its opinion. Some of the main concerns regarding the current law are: the restriction of the definition of places of detention (which should not be an exhaustive list as it stands in the draft law); the need to allow a system of regular and preventive visits to places of detention; the limitations of access to places and information relevant to the treatment of persons deprived of their liberty; the need for a multidisciplinary team. In addition, the Consultative Commission recommended in its opinion to publish annual reports including all the visits conducted to places of detention, and encouraged the future NPM to coordinate its work with other existing national and international relevant actors.</p>
Legal framework	<p>Ombudsman bill</p> <p>Ratification and NPM draft law</p>

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FYR Macedonia

Ratification: 13 February 2009 – **NPM DESIGNATED: OMBUDSMAN, POSSIBLY IN AGREEMENT WITH NGOS**

Updated on 22 June 2009

Background information	<p>Population: 2, 050,000 Area (sq km): 25, 333 Prison population: 2 200 Number of establishments/institutions: 8</p> <p>Macedonia gained independence from the former Republic of Yugoslavia in 1991 and established a parliamentary democracy, with a unicameral Parliament (Sobranie). Since the last legislative elections in July 2006, Nikola Gruevski (the Prime Minister) has led a multiethnic coalition government under the President, Branko Crvenkovski.</p> <p>The national police force is a central force subordinated to the Ministry of Interior and is composed of officials from the uniformed police, the criminal police and the border police. Local NGOs agree that conditions of detention are poor barely meeting international standards, but the government permitted visits in 2006 by independent human rights organizations. In July 2006, the CPT published its report on its visit to Macedonia in November 2005 and noted improvements and reforms in the prison system. Nevertheless, some problems still persist, such as overcrowding and poor hygienic conditions and medical services.</p> <p>Consideration by international and regional human rights mechanisms</p> <p>UPR examined Macedonia's report in May 2009 National report CAT examined Macedonia's report in May 2008 CAT Concluding observations CPT visited Macedonia in October 2007 CPT visit report (2007)</p>
OPCAT ratification and NPM designation processes	<p>The first ever national seminar was held in the Macedonian capital, Skopje, on 13 March 2008 to discuss the future implementation of the OPCAT. The UN Country Team Macedonia, Office of the High Commissioner for Human Rights and the APT convened a range of government, civil society and ombudsperson representatives to examine this issue, including by drawing on the positive practices and experiences of other countries in this respect. Two APT staff members also attended the event as international experts. A primary aim of the seminar had been to advance an open and inclusive national discussion on the implementation of the instrument in Macedonia. During the seminar it transpired that the authorities responsible for the implementation of the instrument, the Ministry of Foreign Affairs, had consulted the Ombudsman's Office to be the country's NPM, but without raising this issue with Macedonia's wider human rights community. This closed approach to ratification and implementation appeared to continue throughout the year.</p> <p>Macedonia ratified the OPCAT on 13 February 2009. The law on ratification had reportedly passed through the various committees of the Macedonian parliament in December 2008 before being adopted, signed by the president and published in the official parliamentary gazette (No.165/2009) all in the same day on 30 December 2008. It is reported to have been little consultation with civil society or other interested actors regarding its content.</p>
NPM options	<p>According to the law, the Ombudsman's Office was designated as the country's NPM, albeit with some possible civil society involvement. Macedonia confirmed the designation of its NPM upon ratification, making a declaration under Article 17 of the OPCAT.</p> <p>Article 4 of the Law of the OPCAT states: "<i>With regard to art 17 of the Protocol, the Republic of Macedonia is giving the following statement: "In accordance with Article 17 of the Protocol, the Republic of Macedonia declares that the National Ombudsman of the Republic of Macedonia is appointed to act as a national preventive mechanism. In cooperation with and by prior consent by the Ombudsman, non-governmental organizations registered in the Republic of Macedonia and organizations with a status of humanitarian organizations in the Republic of Macedonia, may take some of the responsibilities of the national preventive mechanism."</i> The APT is informed that a series of round-table events may be held in the final quarter of 2009 in order to discuss the various components of the NPM.</p>
Legal framework	Macedonian OPCAT Ratification Law

Shaded boxes: States Parties to the OPCAT

Unshaded boxes: States that have signed the OPCAT or are due to sign it in a near future

Malta

Ratification: 24 September 2003 - **NPMS DESIGNATED: BOARD OF VISITORS FOR DETAINED PERSONS AND BOARD OF VISITORS FOR THE PRISONS**

Updated on 01 April 2009

Background information	<p>Population: 400,214 Area (sq km): 316 Prison population: 352 Number of prisons: 1 Psychiatric institutions: 1 Immigration detention centres: 3</p> <p>Apart from Corradino Prison, there are four detention facilities for migrants (Police Headquarters, Police Station in Ta'Kandja, Safi Barracks and Lyster Barracks). Asylum-seekers and other types of "irregular migrants" arriving without identity documents are automatically detained. They may be locked up for a period not exceeding 18 months, even if their asylum claims have not yet been processed and decided upon. Since this migrants' detention policy was put in place back in 2002, more than 5400 migrants have been detained.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>CAT considered Malta in 1999 CAT Concluding observations</p> <p>Last CPT visit: June 2005 (CPT reports)</p> <p>Commissioner for Human Rights (Council of Europe) published recommendations in 2006 following its visit to Malta in 2004 Commissioner HR recommendations (2006)</p>
NPM designation process	<p>Two Boards were appointed in September 2007 to assume the NPM mandate: the Board of Visitors for the Prisons and the Board of Visitors for Detained Persons (or Board of Visitors for Detained Migrants).</p>
NPM functioning	<p>a) Board of Visitors for Detained Persons (or Board of Visitors for Detained Migrants – BVDM)</p> <p><u>Composition</u></p> <p>The members are appointed annually by the Minister responsible for immigration, i.e the Minister for Justice and Home Affairs. The NPM legislation states that the BVDM shall be comprised of minimum of 2 and maximum of 8 members. Those members may be re-appointed. Initially, the BVDM was comprised of 4 members (including a Chairperson and a Secretary), and since August 2008, the membership increased to 7 members.</p> <p><u>Monitoring places of detention</u></p> <p>The mandate of the BVDM only covers detention centres for migrants, but the APT was informed that Board visited twice the psychiatric hospital where asylum seekers were receiving some treatment.</p> <p><u>Making public and policy recommendations</u></p> <p>In conformity with the BVDM's legislation, the Board sent its annual report to the Minister in charge of migrants' issues.</p> <p><u>Financial and logistical resources</u></p> <p>The APT was informed that the BVDM does not have funding and office. Although the NPM legislation states that the BVDM should meet at least once per month, in practice, the Board meets an average of three times per month, within the detention centres.</p> <p><u>Collaboration with other entities</u></p> <p>According to the BVDM, the NPM members are in contact with relevant organisations working on migrants' issues, including Jesuit Refugee Services, the Red Cross, UNHCR and <i>Médecins Sans Frontières</i> (MSF). The APT has been informed that a coordination group made of representatives of BVDM, the organisations mentioned above and the Organisation for the Integration and Welfare of Asylum Seekers, have been created to avoid duplication in work and to better coordinate between themselves.</p> <p><u>Other issues</u></p> <p>The legislation designating the BVDM as one of Maltese NPMs provides for the possibility to hear and act on complaints from detainees. The BVDM also investigates on reports received by any third parties (including UNHRC and NGOs).</p>

Shaded boxes: States Parties to the OPCAT

Unshaded boxes: States that have signed the OPCAT or are due to sign it in a near future

Malta

Ratification: 24 September 2003 - NPMS DESIGNATED: BOARD OF VISITORS FOR DETAINED PERSONS AND BOARD OF VISITORS FOR THE PRISONS

Updated on 01 April 2009

	<p>b) The Board of Visitors for the Prisons (BVP)</p> <p><u>Composition</u></p> <p>As far as the APT is aware, the BVD is comprised of twelve members, including a Chairperson. The BVP legislation states that the Board should meet at least once per month at Corradino Prison, and the Board has the possibility to invite the director of the Prison to attend whole or part of their meetings.</p> <p><u>Monitoring places of detention</u></p> <p>The BVP has similar functions to the BVDM, and its mandate is restricted to the only existing prison in Malta (Corradino Prison). The BVP's law grants access to all premises and records to the Board's members, and states more particularly that "<i>The Board and every member thereof shall have access at any time to every part of the prison and to every prisoner out of the sight and hearing of all prison officers</i>".</p> <p><u>Making public and policy recommendations</u></p> <p>The BVP should write an annual report to the Minister of Justice and Home Affairs.</p> <p><u>Financial and logistical resources</u></p> <p><u>Collaboration with other entities</u></p> <p>The BVP' legislation establishes a relationship with the Minister of Justice and Home Affairs. For instance, the Board reports directly to the Minister in charge of the Prison.</p> <p><u>Other issues</u></p> <p>Similarly to the BVDM's legislation, the BVD's one provides for the possibility to hear and act on complaints from detainees, and to "<i>inquire into and report upon any matter which it deems proper, or the Minister requests it, to enquire into</i>".</p> <p>The APT is not aware of other preventive bodies that carry out visits to other places of detention in Malta. Lastly, the APT was informed that there is apparently no overlap of mandates between the Boards, and no communication between the two institutions.</p>
SPT communications	Official correspondence to the SPT designating the NPM
Legal framework	Board of Visitors for Detained Persons Regulations Prisons Regulations

Moldova, Republic of

Ratification: 24 July 2006 - **NPM DESIGNATED: National Centre for Human Rights (Ombudsman) and civil society representatives within a so-called Consultative Council.**

Updated on 5 November 2008

Background information	<p>Population: 4,466,706 Area (sq km): 33,843 Prison population: 8876¹⁵ Number of prisons: 18</p> <p>Formerly part of Romania, Moldova was incorporated into the Soviet Union at the close of World War II. Although independent from the USSR since 1989, Russian forces have remained on Moldovan territory east of the Dniester River supporting the Slavic majority population, mostly Ukrainians and Russians, who have proclaimed a separate "Transnistria" republic. The poorest nation in Europe, Moldova became the first former Soviet state to elect a Communist as its president in 2001.</p> <p>The national police force is the country's primary law enforcement body. The police force is subdivided into regional and city police commissariats, which are subordinated to the Ministry of Internal Affairs.</p> <p>Conditions in most prisons in the country (including Transnistria) remain harsh, and in some instances life-threatening, with serious overcrowding. The US Department of State reported that as of 2005, independent human rights observers were generally permitted to visit prisons and that the Moldovan Center for Human Rights regularly made prison visits during the year. The government cooperated with the International Committee of the Red Cross (ICRC) and permitted visits to prisoners.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>CAT considered Moldova in 2003 CAT Concluding observations Last CPT visit: March 2006 and 2007 (CPT reports)</p> <p>Commissioner for Human Rights (Council of Europe) published its follow-up report to its recommendations made in 2000 Commissioner HR follow-up report (2003)</p>
NPM designation process	<p>In November 2006, the APT participated in a conference in Chisinau on NPM establishment, convened by the OSCE Mission to Moldova, Penal Reform Institute, and Amnesty International Moldova. During the two-day session, some 60 participants (including government officials, the Ombudsman's office, lawyers, representatives of civil society and of international organizations) exchanged presentations, participated in discussions, and began the process of assessing existing institutions and identifying options for a new visiting mechanism.</p> <p>In theory, the meeting was supposed to lay the foundations for the work to be undertaken by the Ministry of Justice Working Group in the months ahead. However the APT was informed that the government intended simply to designate the Centre for Human Rights without further consultation. The OSCE Mission to Moldova therefore attempted to facilitate a dialogue between Moldovan civil society and the government in order that the former's opinion was taken into account regarding the establishment of the NPM.</p> <p>Civil society called for their involvement in the mechanism. The APT's expertise was also sought by the OSCE Mission to Moldova regarding both the manner in which the NPM process had proceeded and the draft legislation itself. The OSCE Mission to Moldova conveyed APT's comments to the Ministry of Justice in April 2007.</p> <p>In June and July 2007, the Moldovan Government introduced draft amendments to the Law on Parliamentary Advocates, to establish the NPM under the National Centre for Human Rights (which is the office for the three co-equal national Ombudsmen, known also as Parliamentary Advocates) specifying it was to carry out its functions in cooperation with civil society. The draft law also would have established a Consultative Council, composed of civil society representatives and independent experts, and setting out the rights of its members, such as carrying out periodic preventive visits to places of detention, access to information regarding treatment and conditions of detention, unlimited access to meetings with persons in detention and preparation of the visit reports. According to the draft law, the composition and Regulation of the Consultative Council would have been approved by the director of the Centre.</p>

¹⁵ Figure does not include the Transnistrian region.

Moldova, Republic of

Ratification: 24 July 2006 - **NPM DESIGNATED: National Centre for Human Rights (Ombudsman) and civil society representatives within a so-called Consultative Council.**

Updated on 5 November 2008

	<p>During the following weeks, some legislators sought to remove key aspects of the legislation providing for civil society participation. High-level representations by the OSCE Mission and by national NGOs (Amnesty International Moldova and the CReDO Resource Center of Human Rights) resulted in the restoration/preservation of most, if not all, of the deleted provisions. The law was adopted in its final reading on 27 July 2007, within a few days of the time-limit for instituting the NPM for Moldova (24 July 2007).</p>
NPM options	<p>Amendments to the Law on Parliamentary Advocates and to the Law on amendments to the Regulation of the Center for Human Rights designated the National Center for Human Rights (Ombudsman's Office) as the NPM. The law also establishes a Consultative Council, composed of eleven members from the civil society, the Chair being one of the Parliamentary Advocates. In the final part of the year the OSCE Mission to Moldova facilitated the process of drafting a legal statute for the Consultative Council, which is a crucial document as it will determine a range of functions and activities of the Consultative Council including: its goals and guiding principles; composition; selection and dismissal of its members; their privileges and immunities; and the activities and duties of the institution as Moldova's NPM. At the end of December 2007 the draft legal statute was sent to the Parliamentary Human Rights Commission for approval and final approval of the legal statute was secured on 31 January 2008.</p> <p>The Centre for Human Rights began the process of recruiting the eleven members of the Consultative Council in early February 2008, through the establishment of a five person recruitment panel, comprising 2 Parliamentary Advocates, 2 representatives of Human rights NGOs and one of the academia. Members were selected mid-March and the composition has been approved by the Parliamentary HR Committee beginning of April. On 23 April, the APT organized, under the auspices of the OSCE Mission, a one-day introduction on detention monitoring for all the members of the Consultative Council and staff of the Human Rights Center. The first meeting of the Consultative Council was held on 29 April where the modalities and programme of visits should be discussed.</p> <p>The APT returned to Moldova in the second half of September 2008 in order to establish how the NPM was functioning in practice as well as to discuss the practical implications of a visit by the SPT to the country with national actors, including with the de facto authorities in Tiraspol. Unfortunately, the activities of the NPM had been frustrated by the tragic death of the Ombudsman who chaired the Consultative Council and several other members resigning. In the coming months the APT, in close cooperation with the OSCE Mission to Moldova, will continue to assist the NPM in its initial phase of functioning.</p>
SPT communications	<p>Official correspondence to the SPT designating the NPM</p>
Legal framework	<p><i>Amendments to existing legislation concerning the Ombudsmen were undertaken – Moldova 1, Moldova 2</i></p>

OPCAT Country Status – Europe and Central Asia

Mongolia

OPCAT accession: under consideration

Updated on 9 December 2008

Background information	<p>Population: Approximately 3 million Area (sq km): 1, 565 000 Prison population: 6,593 Number of establishments/institutions: 60</p> <p><u>Consideration by international human rights bodies</u> Human Rights Committee examined Mongolia's report in November 2000 Concluding observations</p>
OPCAT ratification and NPM designation processes	<p>The APT visited Mongolia in April 2008 in order to initiate a one-year project with its partner, Amnesty International (AI) Mongolia, aimed at promoting independent detention monitoring as well as the OPCAT in the country. For this latter purpose a half-day round-table on the OPCAT was held at the Ministry of Justice and Home Affairs on 14 April 2008. The APT, AI Mongolia, Ministry of Justice and Home Affairs, UNDP Mongolia and the <i>République et Canton de Genève</i> all co-sponsored the meeting. It should be noted, however, that the APT had originally visited Mongolia in August 2005 when the organization met a limited number of national actors about the OPCAT. At the time there had been very little discussion about the issue in the country.</p> <p>During the April 2008 round-table meeting a representative from the Ministry of Justice and Home Affairs informed the participants that a working group had recently been established under the auspices of the Ministry, which included representatives from the Ministry of Foreign Affairs, National Human Rights Commission, National Legal Centre and AI Mongolia. Originally, the working group had until 20 June 2008 to finalize its initial study into the feasibility of Mongolia ratifying the instrument, although this deadline was later extended.</p> <p>Since the April 2008 round-table AI Mongolia has continued to lobby the authorities in relation to the OPCAT. Unfortunately, despite its promotional efforts, within the working group there has been resistance to ratification on the part of the authorities, particularly the Prosecutor's Office and the Ministry of Foreign Affairs. The former body has reportedly tried to argue that, as it fulfils the same role as an NPM, there is no need to ratify the instrument. In spite of this resistance the APT is continuing to support AI Mongolia during this ongoing process.</p>
NPM options	<p>There is no clear proposal at the present moment of an NPM. These discussions are part of the ongoing work of the OPCAT working group.</p> <p>Nonetheless, certain places of detention are currently monitored by existing monitoring bodies. These include Mongolia's National Human Rights Commission and various non-governmental organizations, a number of which are part of AI Mongolia's and the APT's detention monitoring project. However, not all types of detention facilities are monitored and there are concerns about the regularity of visits to detention facilities which are subjected to such coverage.</p>
Legal framework	<p><i>No NPM establishment law has been adopted yet.</i></p>

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Unshaded boxes: States that have signed the OPCAT or are due to sign it in a near future

Montenegro

Ratification: 06 March 2009 – NPM designation: under progress

Updated on 22 June 2009

Background information	<p>Population: 630,548 Area (sq km): 14,026 Prison population: 734 Number of prisons: 3</p> <p>Independent from the late middle ages until 1918, Montenegro was later a part of various incarnations of Yugoslavia and the state union of Serbia and Montenegro. Based on the results of a referendum held on May 21, 2006, Montenegro declared independence on June 3, 2006. Montenegro was recognised as an independent nation by Serbia on June 15.</p> <p>The interior ministry controls both national and border police.</p> <p>The US State Department reported that in 2005 that Prison conditions generally met international standards; however, some problems remained. Prison facilities were antiquated, overcrowded, poorly maintained, and had inadequate hygiene. The government permitted prison visits by human rights observers, including the International Committee of the Red Cross (ICRC) and local NGOs. Both the ICRC and the Helsinki Committee of Montenegro made several visits during the year. The ombudsman's office routinely visited prisons, meeting with detainees and inmates without prior notice.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>CAT considered Montenegro report in November 2008: Concluding observations .</p> <p>CPT visited Serbia and Montenegro in 2004 CPT visit report to Serbia and Montenegro (2004)</p>
NPM designation processes	<p>The OSCE Mission to Montenegro co-sponsored two round-table meetings on the OPCAT in Montenegro in July and November 2006. The first national round-table on the OPCAT in Montenegro was held in Podgorica on 10 July 2006, the transcripts of which have been published by the OSCE in a booklet (available in the local language only).</p> <p>The first event, which was entitled “Round-Table on National Mechanisms for Prevention of Torture – Implementation of OPCAT”, was officially co-sponsored by the OSCE Mission to Montenegro and the Republic of Montenegro’s Institution for Enforcement of Penal Sanctions, otherwise known as the Montenegrin prison service. The meeting consisted of a series of presentations by national actors on the various existing forms of inspection of places of detention in the country, followed by group work in the afternoon to identify whether a suitable body existed in the country which could act as Montenegro’s national preventive mechanism.</p> <p>The participants concluded that for the most part the latter body fulfilled the criteria regarding its independence, mandate, authority and composition but did not fully comply with all the requirements to be designated as NPM (see “NPM options” below). The participants agreed that most of the shortcomings could be overcome, although there was some doubt whether additional financial resources could be secured in the short-term. Some of these concerns were amplified further during a second meeting which specifically focussed on the issue of the NPM on 13 November 2006. The APT gave several presentations during the exchange.</p> <p>On 16 January 2007 the OSCE Mission to Montenegro issued a press release stating, among other things, that a working group had been set up to draft concrete proposals for establishing an NPM and that in 2007 the OSCE Mission was planning a number of capacity-building initiatives, including a study trip to enable the working group to see a recently created NPM in action. The press release concluded by stating: "We anticipate much greater co-operation with states that have already created such a mechanism, so that we can learn from them and create a system that works for Montenegro".</p> <p>After an apparent lull in their activities the APT was informed that in October 2007 a working group comprising government, non-government and ombudsman representatives met to further discuss the proposals, referred to above. In late 2007 the working group also undertook a study visit to Slovenia in order to learn more about how Slovenia is implementing its obligations under the OPCAT.</p> <p>On the occasion of its examination by the CAT, Montenegro informed the UN body that a “<i>bill on the ratification of the OPCAT is under the consideration of the Parliament</i>”. Montenegro finally ratified the OPCAT on 9 March 2009.</p> <p>On 22-23 April 2009 the OSCE Mission to Montenegro and OSCE-ODIHR co-hosted a pan-Balkan meeting on OPCAT implementation in Podgorica, which the APT also attended. During the visit the</p>

Shaded boxes: States Parties to the OPCAT
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Unshaded boxes: States that have signed the OPCAT or are due to sign it in a near future

Montenegro

Ratification: 06 March 2009 – NPM designation: under progress

Updated on 22 June 2009

	APT and other international experts, including from the SPT, met various government representatives to discuss draft legislation which will anchor the designation of the Ombudsman's Office in law. At the end of June 2009 the APT sent its detailed comments concerning the draft law to the OSCE Mission to Montenegro, which was coordinating the process of obtaining comments in writing.
NPM options	<p>It was apparent from the first round-table (July 2006) that the Protector of Human Rights and Freedoms of the Republic of Montenegro (Ombudsman) was the only body in Montenegro that even remotely approaches the OPCAT requirements. The Ombudsman's Office was established in November 2003 with the strong involvement of the OSCE Mission to Montenegro. The mechanism was established by Article 1 of the Law on Protection of Human Rights and Freedoms, which states: "<i>Protector of Human Rights and Freedoms (Ombudsman) protects human rights and freedoms which are normally guaranteed according to the Constitution, law, ratified international agreements on human rights and generally adopted rules of the international law if they are violated by the act, acting or non-acting of the State Organs, organs of the Local Government, Self-Government and Public Services and other bearers of the Public Authorities.</i>" According to the law, it has the right to enter any place of detention and consult detainees in private.</p> <p>The Ombudsman's Office is assisted by two Deputy Ombudsmen, seven legal advisors and several administrative staff. Nevertheless, even in a country of just 650, 000 people, Ombudsman Šefko Crnovšaniin argued that his office is under-resourced.</p> <p>During the round-table the participants, which included high-ranking representatives from the prison service, police administration, Ministries of Health and Justice, Ombudsman's Office and NGOs, were asked to examine the Ombudsman's Office in the light of the criteria laid down in the OPCAT text. The participants concluded that for the most part the latter body fulfilled the criteria regarding its independence, mandate, authority and composition. However, they recognised that the Ombudsman's Office fell short in the following respects:</p> <ul style="list-style-type: none"> • The Ombudsman's Office did not have sufficient financial resources to allow the mechanism to conduct effective monitoring; • Although the Ombudsman and the Deputy Ombudsmen were elected by Parliament, there was a feeling among the group that this process could be politicized. As a result the Ombudsman's Office highest ranking officials could be seen to be politically dependent on the elective body; • The staff of the Ombudsman's Office were recruited by the state authorities. This was not an independent process; • The staff of the body were mainly lawyers and there was a gender imbalance in favour of women. <p>The participants of the meeting agreed that most of the shortcomings could be overcome, although there was some doubt whether additional financial resources could be secured in the short-term. To address this issue it was proposed that ad hoc working commissions be temporarily set up within the Ombudsman's Office comprising external experts in order to deal with specific issues i.e. monitoring the treatment of psychiatric patients or minors in detention. The advantage of this approach would be that it would be a relatively inexpensive means of supplementing additional human resources and expertise to the ongoing activities of the Ombudsman's Office.</p> <p>At the second meeting held in November 2006, it became clear that the Ombudsman's lack of resources had seriously undermined his office's capacity to undertake visits to places of detention. Conversely, a major part of his capacity was employed with dealing with complaints concerning trial proceedings and that he generally did not monitor places of detention on a proactive basis. It also emerged that in law the Ombudsman does not have access to psychiatric institutions or care homes for persons with intellectual or physical disabilities. It was therefore proposed at the meeting that perhaps an additional monitoring body be established to supplement the activities of the Ombudsman in the framework of the OPCAT. This and other issues will be discussed during further events planned in the near future in the country.</p> <p>The working group created in 2007 finalized its recommendations regarding Montenegro's NPM and delivered its findings in late 2008, proposing that the Ombudsman's Office be designated as the NPM, albeit with additional human and financial resources. It was reportedly proposed that an additional position of Deputy Ombudsman be created with two support staff. Moreover, the Deputy Ombudsman would be supported in his or her work by a body of experts who would be drawn from civil society and academia.</p>

Shaded boxes: States Parties to the OPCAT

Unshaded boxes: States that have signed the OPCAT or are due to sign it in a near future

OPCAT Country Status – Europe and Central Asia

Montenegro

Ratification: 06 March 2009 – **NPM designation:** under progress

Updated on 22 June 2009

Legal framework

No NPM establishment law has been adopted yet.

[OPCAT RATIFICATION LAW](#)

Shaded boxes: States Parties to the OPCAT

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The Netherlands**Signature:** 3 June 2005 - **Ratification:** under consideration

Updated on 25 July 2008

Background information	<p>Population: 16,491,461 Area (sq km): 41,526 Prison population: 21 013 Number of prisons: 102</p> <p>Netherlands is a constitutional monarchy with a bicameral parliamentary legislative system. Aruba and the Netherlands Antilles are two autonomous countries of the Kingdom of the Netherlands; they also feature parliamentary systems and constitutional protection of human rights. Prison conditions on the island are substandard though were improved throughout 2005. Regional police forces have primary responsibility for maintaining internal security. The royal constabulary and investigative organizations also have specified responsibilities for internal and external security.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>CPT visited the Netherlands in June 2007 and last CPT report in 2002 CPT report visit (2002) CAT considered the Netherlands report in 2007 CAT Concluding observations The Netherlands report has been examined by the HCR in the framework of the UPR in April 2008 Report of the Working Group</p>
OPCAT ratification and NPM designation processes	<p>In October 2006 the APT was informed of the current status of the NPM process in the Netherlands. According to information provided by the Ministry of Foreign Affairs, the process of ratification has been on hold since the country's signature of the instrument in June 2005 due to ongoing changes in the judicial system. Legislation introduced on 1 October 2006 centralized the prison inspectorate system, placing the new control mechanism directly under the responsibility of the Minister of Justice: previously prison monitoring was decentralized. The Dutch authorities are said to be currently assessing whether the new control mechanism is in accordance with the criteria laid down in the OPCAT text, particularly in relation to its independence. Ratification is dependent upon the outcome of this process of examination.</p> <p>Discussions are also said to be ongoing in between other relevant ministries regarding the implementation of the instrument in the country as a whole and whether existing mechanisms would be suitable for this role. It was notable that during its examination of the Netherlands's fourth periodic report in May 2007 the UN Committee against Torture welcomed the assurances given by the Netherlands that the OPCAT would be ratified in the second half of 2007.</p> <p>In response to the recommendations made to ratify the OPCAT during the UPR process (April 2008), the Netherlands answered that "<i>The Kingdom of the Netherlands can support this recommendation and will start the national process of ratification later this year</i>".</p> <p>In addition, the APT has been informed that the OPCAT should be ratified by the end of 2008. On 2^d July 2008, the Dutch Minister of Foreign Affairs informed the Dutch Parliament about the fact that the ratification of OPCAT will be brought to the Council of Ministers in the near future. Furthermore, the government is considering how to make good use of the existing mechanisms for the future national preventive mechanism.</p>
NPM options	<p>It is relevant to note that, apart from the above mentioned prison inspection mechanism, the Netherlands currently has several other existing national visiting mechanisms. These include the National Ombudsman and the system of Police Cell Supervisory Committees, which exist throughout the country's 25 police administrative regions. It therefore remains to be seen whether these bodies will play a role in the implementation of OPCAT in the country.</p>
Legal framework	<p><i>No NPM establishment law has been adopted yet.</i></p>

OPCAT Country Status – Europe and Central Asia

Norway

Signature: 24 September 2003 - **Ratification:** under consideration

Updated on 25May 2009

Background information	<p>Population: 4,610,820 Area (sq km): 324,220 Prison population: 3 048 Number of prisons: 46</p> <p>Norway is a parliamentary democracy and constitutional monarchy. The national police have primary responsibility for internal security; however, the police may call on the armed forces for assistance in times of crisis, such as internal disorder or natural catastrophe. In such circumstances, the armed forces are under police authority. The Ministry of Justice and the Police oversees the police forces.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>CAT considered Norway report in November 2007 CAT Concluding observations .</p> <p>CPT visited Norway in 2005 : CPT visit report</p> <p>Commissioner for Human Rights (Council of Europe) published its follow-up report to its recommendations made in 2001 Commissioner HR follow-up report (2006)</p>
OPCAT ratification and NPM designation processes	<p>In early July 2006 the APT received an email from the Ministry of Foreign Affairs of Norway stating: <i>“We can assure you that the Norwegian Ministry of Foreign Affairs will strive to ensure that Norway ratifies the Protocol in a timely manner.”</i> No information was revealed about how the instrument would be implemented in practice in the country. The APT learned in early June 2007 that, although Norway’s ratification of the instrument had been delayed, it was envisaged that it would be forthcoming in the near future and that the issue of NPM would be resolved by the time the country was examined by the UN Committee against Torture in November 2007.</p> <p>Nevertheless, the CAT in its concluding observations (November 2007) welcomes Norway’s assurance that measures are being undertaken to seek the ratification of the OPCAT, and encourages Norway to proceed to a prompt ratification.</p> <p>In its pledge in support of its candidacy in the UN Human Rights Council in May 2009, Norway stated the following: <i>“Norway has further signed (...) and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and we intend to ratify these instruments as soon as the necessary national legislation has been adopted.”</i></p>
NPM options	<p>Like most Nordic countries, Norway has a relatively long history of established Ombudsman-type institutions, a Parliamentary Ombudsman having been established in the 1814 Constitution. It is therefore not inconceivable that one or several of such bodies may be considered as potential mechanisms for the implementation of the OPCAT.</p> <p>Norway currently has three such entities in the domain of human rights, which include the Parliamentary Ombudsman, Ombudsman for Children and the Gender Equality Ombudsman. All three institutions investigate complaints from individuals concerning injustice or maladministration on the part of the state administration. In particular, the Parliamentary Ombudsman is comprised of five different departments, one of which is responsible for complaints relating to police, prisons, hospitals and aliens. However, the Ombudsman for Children, reportedly the first of its kind when it was established in 1981, <i>“... has free access to all public and private institutions for children”</i> and in theory could play an important role with regard to OPCAT.¹⁶</p> <p>As previously mentioned (see Denmark), Ombudsman-type institutions have their distinct shortcomings vis-à-vis the minimum criteria laid down in the Optional Protocol text (such as their reactive nature, composition and bounded resources). Even so, they also possess significant strengths which may offset some of these perceived deficiencies.</p>
Legal framework	<p><i>No NPM establishment law has been adopted yet.</i></p>

¹⁶ Article 4 of the Act No.5 of March 6 1981 relating to the Ombudsman for Children.

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Poland

Ratification: 14 September 2005 - **NPM DESIGNATED: Commissioner For Civil Rights Protection (Ombudsman)**

Updated on 03 November 2008

Background information	<p>Population: 38,536,869 Area (sq km): 312,685 Prison population: 87 462 Number of prisons: 85 Number of pre-trial detention centres: 70 Number of psychiatric institutions: 169 Number of homes for juveniles: 127 Number of detention facilities for migrants: 20 Number of military barracks: 20 Number of outside facilities of prisons or pre-trial detention centres: 30 Number of facilities at police stations: 351</p> <p>Since 1991, Poland has been a multiparty democracy with a bicameral parliament. The police force is a national law enforcement body with regional and municipal units overseen by the minister of interior and administration. Prison conditions remain generally poor. Overcrowding and insufficiency of medical treatment are the main problems. The government permits prison visits by independent human rights organizations, and there were visits by the UNHCR and the Helsinki Foundation during 2005.</p> <p>SPT: Mr. Zbigniew Lasocik was elected SPT member on 18 December 2006 for a two years term, and was re-elected on 30 October 2008 for a four year-term.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>CAT considered Polish report in May 2007 CAT Concluding observations</p> <p>CPT visited Poland in 2004 CPT visit report</p> <p>Commissioner for Human Rights (Council of Europe) published its follow-up report to its recommendations made in 2003 Commissioner HR follow-up report (2007)</p>
NPM designation process	
NPM options	<p>Poland has designated as its NPM the Commissioner for Civil Rights Protection (Ombudsman), which was established in 1987.</p> <p>The rights and powers of the Commissioner for Civil Rights Protection are anchored in various articles of the Constitution, most notably Article 80 and Articles 208-212. Article 80 clearly states: <i>“In accordance with principles specified by the statute, everyone shall have the right to apply to the Commissioner for Civil Rights Protection for assistance in the protection of his freedoms or rights infringed by organs of public authority.”</i> Thus, the main task of the office was to deal mainly with complaints lodged by members of the public on an array of matters.</p> <p>In May 2007 the UN Committee against Torture also noted with satisfaction Poland’s ratification of the OPCAT during its examination of the country’s fourth periodic report.¹⁷</p>
NPM functioning	<p><u>Composition</u></p> <p>At the time of the designation, the Unit on Executive Criminal Law was reportedly the main department which implemented a programme on preventive visits. This department consisted of approximately 8 staff, of whom only 4 or five were undertaking visits to places of detention. The NPM has been facing some resource constraints, publicly acknowledged by the Polish Ombudsman, Janusz Kochanowski, at a one-day meeting focusing on the deprivation of liberty and respect for human rights, which was organized by the Ombudsman of the French Republic and the Council of Europe’s Commissioner for Human Rights in Paris on 18 January 2008.</p> <p>However, the APT was informed later in the year that the staff dedicated to the NPM has increased. The visits are currently conducted by three Departments of the Office of the Commissioner for Civil Rights Protection, comprising 17 men and 12 women, of whom 9 women and 17 men are conducting preventive visits in places of detention. The Ombudsman’s Office also started to hire external experts such as psychiatrist and other health professionals such as addiction experts. The NPM is reportedly planning to hire one expert to each preventive visit that will take place in 2008.</p>

¹⁷ UN Doc. CAT/C/POL/CO/4, 16 May 2007 – paragraph 4d.

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OPCAT Country Status – Europe and Central Asia

<p><u>Poland</u></p> <p>Ratification: 14 September 2005 - NPM DESIGNATED: Commissioner For Civil Rights Protection (Ombudsman)</p> <p style="text-align: right;"><i>Updated on 03 November 2008</i></p>	
SPT communications	Official correspondence to the SPT designating the NPM
Legal framework	Commissioner for Civil Rights Protection (www.rpo.gov.pl) Ombudsman Act Constitution of the Republic of Poland (relevant excerpt)
NPM reports	The first report on the activities of the NPM will be published in March 2009 in view of the fact that the Polish Ombudsman was designated as the NPM in January 2008. Nevertheless, the institution did refer to its activities related to prevention of torture and ill-treatment in its 2007 annual report. NPM report Poland

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OPCAT Country Status – Europe and Central Asia

Portugal

Signature: 15 February 2006 - **Ratification:** under consideration

Updated on 28 May 2008

<p>Background information</p>	<p>Population: 10,605,870 Area (sq km): 92,391 Prison population: 12 870 Number of prisons: 58</p> <p>A 1910 revolution deposed the Portuguese monarchy; for most of the next six decades, repressive governments ran the country. In 1974, a left-wing military coup installed broad democratic reforms. Portugal is now a constitutional democracy with a president, a prime minister, and a parliament elected in multiparty elections.</p> <p>Prison conditions remain poor, and guards mistreat prisoners. Other problems include overcrowding, inadequate facilities, poor health conditions, and violence among inmates. Most of the guidelines and legislative proposals the government had adopted in 2004 to reform the prison system had not been put in practice as of the end of 2005; however, some improvements were made including the opening of new facilities and somewhat reduced overcrowding.</p> <p>There are approximately 50 thousand law enforcement officials, including police and prison guards. The Ministries of Justice and Internal Administration are primarily responsible for internal security. The Republican National Guard (GNR) has jurisdiction outside cities, and the Public Security Police (PSP) has jurisdiction in cities. The Aliens and Borders Service (SEF) has jurisdiction on immigration and border issues. An independent ombudsman is chosen by the parliament and the Inspectorate General of Internal Administration (IGAI) to investigate complaints of abuse or mistreatment by police; however, nongovernmental organizations (NGOs) criticized the slow pace of investigations and the lack of an independent oversight agency to monitor the IGAI and Ministry of Interior.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>CAT considered Portugal report in November 2007: CAT Concluding observations</p> <p>CPT visited Portugal in 2003 CPT visit report</p> <p>Commissioner for Human Rights (Council of Europe) visited Portugal in 2003 Commissioner HR visit report (2003)</p>
<p>OPCAT ratification and NPM designation processes</p>	<p>The APT sent a letter in March 2006 to the Minister of Foreign Affairs offering assistance in the process of ratification and implementation of the OPCAT. The Chief of Cabinet replied that the ratification process was already underway.</p> <p>The UN Committee against Torture (CAT) recommended in its concluding observations that Portugal should ratify the OPCAT. The CAT also requested for further information regarding independent bodies in charge of visiting Portuguese prisons in its list of issues addressed to Portugal.</p> <p>That APT was informed that <i>Provedoria de Justiça</i> (Ombudsman) has been contacted by the Portuguese government before the signature of the OPCAT, to inquire about the possibility for this institution to assume the mandate of the National Preventive Mechanism. The Provedoria informed the government of its intention to assume this mandate, provided that additional resources would be granted to their institution.</p> <p>The Provedoria requested in January 2008 information to the Ministry of Foreign Affairs on further development regarding the implementation of the OPCAT in Portugal. In May 2008, the APT has been informed that the OPCAT ratification and implementation is currently under consideration by the Ministry of Justice.</p> <p>The Provedoria has put in place a programme of detention monitoring, aiming at visiting central and regional detention facilities. The Provedoria also started to visit psychiatric hospitals.</p>
<p>NPM options</p>	<p>The APT is not informed of any process of designation of the NPM in Portugal. Nevertheless, it seems that the Provedoria might be one of the options considered by the Ministry of Justice to assume the NPM mandate.</p>
<p>Legal framework</p>	<p><i>No NPM establishment law has been adopted yet.</i></p>

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OPCAT Country Status – Europe and Central Asia

Romania

Signature: 15 February 2006 - **Ratification:** under consideration

Updated on 02 April 2009

<p>Background information</p>	<p>Population: 22,303,552 Area (sq km): 237,500 Prison population: 35 429 Number of prisons: 45</p> <p>Following the overthrow of the dictatorship in 1989, Romania has become a constitutional democracy with a multiparty, bicameral parliamentary system.</p> <p>The ministry of the administration and interior is responsible for the national police and the gendarmerie, as well as the border police, alien authority, national office for refugees, the general directorate of information and internal protection (DGIPI) (which oversees the collection of intelligence on organized crime and corruption), the special protection and intervention group, and the special aviation unit. Complaints of police misconduct are handled by the internal disciplinary council of the unit where the reported officer works.</p> <p>Prison conditions remain harsh, with overcrowding a serious problem. Media and human rights organizations report that the abuse of prisoners by authorities and other prisoners continues to be a problem. The US State Department considers that as of 2005 the government permitted prison visits by human rights observers and media representatives.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>CPT visited Romania in 2006 and last report in 2004 CPT visit report (2004)</p> <p>Commissioner for Human Rights (Council of Europe) published its follow-up report to its recommendations made in 2002 Commissioner HR follow-up report (2006)</p>
<p>OPCAT ratification and NPM designation processes</p>	<p>On 7 March 2007 the APT wrote to Mihai Răzvan Ungureanu, the Minister of Foreign Affairs of Romania to obtain information about the country's intentions in relation to establishing an NPM and when the country envisages ratifying the OPCAT. To date, there has been no response to the letter. However, the APT is informed that the Ministry of Foreign Affairs has issued an instruction to its embassies in countries which have ratified the instrument to compile information about the NPM process. During a mission to Armenia in March 2007 an APT staff member had a meeting with a representative of the Embassy of Romania to discuss possible implementation of the instrument in Romania.</p> <p>Throughout 2007-2008 there were several civil society inspired initiatives to advance the merits of the instrument. The Romanian NGO, Centre for Legal Resources (CRJ) (www.crj.ro), and the Senate Human Rights Commission of the Romanian Parliament co-sponsored the round-table event titled '<i>Establishing a National Preventive Mechanism - a way of protecting human rights in institutions for people with mental disabilities</i>', which took place in the Romanian Parliament on 18 September 2007. The event had several aims, namely to examine the findings of ten months' monitoring of psychiatric and social care institutions by the Centre for Legal Resources and its related recommendations and, secondly, to consider the possibility of Romania ratifying and implementing the OPCAT. It was encouraging that during the event there appeared to be overall support for the need for an effective monitoring mechanism and for Romania's ratification of the OPCAT.</p> <p>The CRJ and the Romanian Helsinki Committee further advanced this process in 2008 when the NGOs organized further events on this matter. On 26 September 2008 the two organizations co-sponsored a national round-table on the OPCAT in Bucharest, which was attended by a range of relevant actors. Two days earlier, on 24 September 2008, the Romanian government adopted a draft law on ratification. The Romanian parliament, Senate, voted in favour of passing the law on 23 March 2009. It is not yet known when Romania will deposit its ratification with the UN Legal Office in New York, although it is expected to make a declaration under Article 24 of the OPCAT postponing the establishment of an NPM for three years. At the time of writing the APT was informed that Romania intends to create an entirely new body as the NPM.</p>
<p>NPM options</p>	<p>No concrete information is available about the proposed NPM.</p>
<p>Legal framework</p>	<p><i>No NPM establishment law has been adopted yet.</i></p> <p>OPCAT RATIFICATION LAW</p>

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Serbia

Ratification: 26 September 2006 - **NPM establishment:** due to take place before 26 September 2007

Updated on 2 April 2009

Background information	<p>Population: 9,396,411 Area (sq km): 88,361 Prison population: 7,775 Number of prisons: 28</p> <p>The approximately 43 thousand police officers in Serbia are part of the Ministry of the Interior. The police are divided into 33 regional secretariats that report to the republic government. The armed forces are under the control of the state union government and are responsible for national security. During 2005 responsibilities for border security were formally transferred to the Ministry of the Interior; however, in practice there has been no hand over of border post responsibilities from the military to the interior ministry, and military personnel still perform these functions. Police at times beat detainees and harassed persons, usually during arrest or initial detention for petty crimes.</p> <p>The US State Department reports that as of 2005 prison conditions generally met international standards; however, conditions varied greatly between facilities, and some guards abused prisoners. In some prisons, most notably the Belgrade reformatory hospital housing psychiatric prisoners, inmates complained of dirty and inhumane conditions. The government permitted the ICRC and local independent human rights monitors, including the Helsinki Committee for Human Rights in Serbia, to visit prisons and to speak with prisoners without the presence of a warden.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>Last CPT visit: March 2007 (CPT reports)</p> <p>CAT is due to consider Serbia second periodic report in November 2008</p> <p>Human Rights Committee Concluding Observations (2006)</p> <p>Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin - Mission to Serbia and Montenegro (E/CN.4/2006/71/Add.5)</p> <p>Commissioner for Human Rights (Council of Europe) visited Serbia and Montenegro in 2002 Commissioner HR visit report (2002)</p>
NPM designation process	<p>To date no decision has been made regarding Serbia's NPM. On 23-24 March 2009 the APT attended a large-scale two-day conference on the prevention of torture in Belgrade where the audience were informed by the Ministry of Justice that this matter was still under consideration. Shortly after its ratification of the OPCAT on 26th September 2006, the APT wrote to the Ministry of Foreign Affairs of the Republic of Serbia seeking information about how the authorities intended to implement the instrument in practice. In late March 2007 the APT once again wrote to the Minister of Foreign Affairs of Serbia with a view to obtaining more precise information about the NPM process in the country. However, the APT has still to receive a response from the Serbian authorities.</p>
NPM options	<p>An Ombudsman's type institution has only recently been established in the country, known as the Protector of Citizens. The National Assembly of Serbia adopted legislation to create the institution in October 2005 and the Ombudsman is said to be in the process of being set up and its head appointed. Citizens of and foreign residents in Serbia have the right to file a complaint with the Ombudsman, who consider that their rights have been violated by an action or failure to act by a public official and who have exhausted all legal remedies. The particular situation of persons deprived of their liberty has also been taken into account, as Article 27 of the Law on the Protector of Citizens states that persons deprived of their liberty are entitled to submit their complaints in a sealed envelope and detention facilities shall "<i>visibly and publicly provide adequate envelopes</i>".</p> <p>In the light of the establishment of this new institution the Serbian authorities may be inclined to designate it as the country's NPM, since it does have access to places of detention. Article 22 of the Law on the Protector of Citizens states: "The Protector of Citizens shall have the authority to freely access correctional institutions and other places where persons deprived of their liberty are held and to speak in privacy with those persons". However, since the Protector of Citizens is still being established, it is too early to comment to what extent it fulfils the criteria for an NPM laid down in the OPCAT text.</p> <p>The Protector of Citizen will be supported by four Deputies and a Secretariat. It is noteworthy that, according to Article 6 of the same law, in choosing the Deputies, the Ombudsman should "<i>... in particular ensure special expertise for the performance of duties under the Protector of Citizens' competency, primarily in respect to the protection of rights of persons deprived of their liberty, children's rights, rights of national minorities and rights of disabled persons.</i>" As stipulated in the</p>

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OPCAT Country Status – Europe and Central Asia

Serbia

Ratification: 26 September 2006 - **NPM establishment:** due to take place before 26 September 2007

Updated on 2 April 2009

	<p>OPCAT text as a function of an NPM, the institution also has the power to give its opinion on draft legislation and regulations and launch initiatives to amend existing legislation and to create new legislation.</p> <p>Several provisions in the Law on the Protector of Citizens also envisage cooperation with similar provincial institutions. For example, there exists the so-called Provincial Ombudsman of the Autonomous Province of Vojvodina, which commenced functioning in January 2004 in this northern region of the country.</p>
SPT communications	Official communication to the SPT on the NPM designation (4 January 2008)
Legal framework	<p><i>No NPM establishment law has been adopted yet.</i></p> <p>Law on the Protector of Citizens (OSCE translation)</p>

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OPCAT Country Status – Europe and Central Asia

Slovenia

Ratification: 23 January 2007 - **NPM DESIGNATED:** The Human Rights Ombudsperson with NGOs

Updated on 16 March 2009

<p>Background information</p>	<p>Population: 2 010 347 Area (sq km): 20 273 Prison population: 1 301 Number of prisons: 7</p> <p>Slovenia has a directly elected president (head of state), a prime minister (head of government), and a bicameral parliament, composed of the National Assembly (lower house) and the National Council (upper house). There are six prisons and one correctional home for juveniles. The six prisons have facilities at 13 different locations. The US State Department reports that while the law prohibits torture and other ill-treatment, police occasionally use excessive force such as kicks, punches, and shoves during arrest. The US State Department reports that conditions in prisons generally meet international standards, and that the government permits visits by independent human rights observers.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>CAT considered Slovenia in 2003 CAT Concluding observations Last CPT visit January 2006 (CPT reports)</p> <p>Commissioner for Human Rights (Council of Europe) published its follow-up report to its recommendations made in 2003 Commissioner HR follow-up report (2003)</p>
<p>NPM designation process</p>	<p>Amnesty International (AI) Slovenia held a conference titled <i>Democratic Oversight of Policing – Lessons for Slovenia</i>, on 28 October 2004 in the Slovenian capital, Ljubljana, which the APT also attended. The conference was the culmination of a year-long AI Slovenia project on the issue of democratic oversight of policing, including the OPCAT, and a related report was launched the same day. The report examined the work of Slovenia's only existing national monitoring mechanism, Human Rights Ombudsman's Office, in the light of the OPCAT.</p> <p>In its report AI Slovenia was particularly critical about the limited resources of the Ombudsman's Office. AI's 2004 report made this point and stated that, if Slovenia was to sign and ratify this instrument, changes would have to be made to the Ombudsman's Office in order to ensure that visits were carried out on a much more regular basis and that its representatives came from a wider spectrum of professional backgrounds. It is therefore possible that Slovenia's statement under Article 17 of the OPCAT (see below) may have been designed to abate these concerns and to draw on the additional resources and expertise of civil society actors in Slovenia, which are already monitoring certain types of detention facilities in the country.</p>
<p>NPM options</p>	<p>Slovenia ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Act adopted by the National Assembly of the Republic of Slovenia (the Parliament) at its session of 29 September 2006 and it came into force on 1 January 2007. Since ratifying the instrument in January 2007 several measures have been taken by the authorities to establish an NPM.</p> <p>Slovenia is a particularly interesting example of a country which has explicitly foreseen a role for civil society actors in the NPM. When acceding to the OPCAT in January 2007 Slovenia made a formal declaration, stating: <i>"In accordance with Article 17 of the Protocol, the Republic of Slovenia declares herewith that the competencies and duties of the national preventive mechanism will be performed by the Human Rights Ombudsperson and in agreement with him/her also by non-governmental organisations registered in the Republic of Slovenia and by organisations, which acquired the status of humanitarian organisations in the Republic of Slovenia."</i> To date, Slovenia is the only European country which has officially opened up the way for NGOs to participate in the NPM in cooperation with the Human Rights Ombudsman's Office.</p> <p>The following information about Slovenia's NPM was very kindly provided to the APT by a representative of the Human Rights Ombudsman's Office and makes extremely interesting reading:</p> <p>"In Slovenia, the Ministry of Foreign Affairs and the Ministry of Justice provided for drawing up the Ratification Act. The Human Rights Ombudsman participated with proposals already in this stage of drawing up the Ratification Act and the interested non-governmental organizations were also included in this stage of procedure. Amnesty Slovenia played a particularly important role. This organization also had a role of an integrator (bridge) between the ministries and other non-governmental organizations.</p>

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Slovenia

Ratification: 23 January 2007 - **NPM DESIGNATED:** The Human Rights Ombudsperson with NGOs

Updated on 16 March 2009

In view of the entrusted tasks and powers of the national prevention mechanism, the Human Rights Ombudsman started with the activities or preparations for launching implementation of these tasks in 2007. Thus five colleagues and their head (for the most part they are lawyers, one colleague is a doctor of psychology, one has a degree in occupational safety) were appointed for implementation of tasks under the Optional Protocol at the Human Rights Ombudsman. In addition to these tasks, they all are also in charge of work in other fields of activities of the Human Rights Ombudsman. For the present, only one new employee was engaged within the framework of preparations for starting the implementation of these tasks. Reorganization of the Ombudsman's expert service was carried out as well.

Non-governmental organizations registered in the Republic of Slovenia, and organizations which obtained the status of humanitarian organizations in the Republic of Slovenia, were invited to participate in implementation of tasks and powers of the national prevention mechanism by a public invitation published on 5 October 2007 in the Official Gazette of the Republic of Slovenia No. 90.

All non-governmental organizations registered in the Republic of Slovenia and organizations, which obtained the status of humanitarian organizations in the Republic of Slovenia under the Humanitarian Organizations Act (Official Gazette of RS, No. 98/03) and dealing with the protection of human rights or fundamental freedoms, particularly in the field of preventing torture and other cruel, inhuman or degrading punishments or treatments, could apply to the public invitation.

The organizations had to enclose to their application a brief presentation of work in the field of protection of human rights or fundamental freedoms, particularly in the field of prevention of torture or other cruel, inhuman or degrading punishments or treatments. Non-governmental organizations also had to enclose a certificate on registration and humanitarian organizations a certificate on granting the status of a humanitarian organization and on entry into the register of humanitarian organizations.

The organization that wanted to participate in performing the supervision had to submit another declaration, namely that its members who were the subject of a conviction by final judgment for a criminal offence prosecuted *ex officio*, or the subject of a conviction to a final sentence of unconditional imprisonment in the duration of more than 3 months, or a person against whom a final indictment was lodged for a criminal offence prosecuted *ex officio*, would not participate in the performance of supervision.

The invitation for application also contained criteria for selection. Priority in the selection for cooperation was given to those organizations with more experience in the field of human rights or fundamental freedom protection, in particular in the field of prevention of torture or other cruel, inhuman or degrading punishments or treatments (certificate: we asked for description of the most important activities, in particular in the field of preventing the torture or other cruel, inhuman or degrading sentences or treatments).

Two non-governmental organizations applied to the public invitation, i.e. Mirovni inštitut (The Peace Institute) and Pravno – informacijski center nevladnih organizacij (Legal and Information Center of Non-Governmental Organizations), which (both) were also selected for cooperation. Both selected organizations have experience particularly in activities concerning the issues of asylum seekers and aliens and a bit less in the field of police procedures.

The legal status of Legal-informational centre for NGO's Slovenia is private institute – non-profit, nongovernmental organisation. Center was founded 1997 and it started with activities in the same year. Entire work of the Centre can be divided in three main fields: human rights, non-governmental organisations and alternative dispute resolution.

The Peace Institute – Institute for Contemporary Social and Political Studies – is also a non-profit research institution developing interdisciplinary research activities in various fields of the social and human sciences (sociology, anthropology, political science, philosophy, economics, law etc.). The goal of the Institute is not only to adopt a critical stance towards events in the society but also to actively intervene in these events, to link academic research and reflection with practical educational and strategic advisory activities in various fields of public policy and public action in general.

The Peace Institute was founded in 1991 by a group of independent intellectuals who had also been civil society activists in the post-socialist processes of the previous decade in Slovenia and Yugoslavia.

The persons from selected organizations are members of the group determined by the Human Rights Ombudsman for each visit separately. These are mixed groups consisting of members of the

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Slovenia

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Updated on 16 March 2009

Human Rights Ombudsman and persons from selected organizations.

With the selected organizations, the Human Rights Ombudsman concluded a Cooperation Agreement, which regulates the mutual relations of the contract parties in more detail. The Cooperation Agreement is valid until 31 December 2008. Therefore the Human Rights Ombudsman will repeat the invitation towards the end of the current year. Based on the first experiences gained in the cooperation with non-governmental organizations, the Human Rights Ombudsman will also adapt the conditions and criteria for the selection of organizations for future cooperation.

The place and time of supervision and the number of members of the supervision group in a particular place of supervision is determined by the Human Rights Ombudsman on a case-by-case basis. The size of the group is depending on the size of the institution to be visited. The smallest group consists of three members: one representative of the Human Rights Ombudsman and one person from every selected organization. Normally the Human Rights Ombudsman joins these visits in person.

In determining the place of supervision, the programme of visits adopted for this purpose by the Human Rights Ombudsman in cooperation with the selected organizations will be taken into consideration, account being taken also of other circumstances that might require an immediate visit where appropriate. The programme foresees a visit to every prison in Slovenia and every psychiatric institution, aliens' centre and asylum home at least once a year and a visit to police stations with detention premises at least every two years. Every year, we also plan to visit a few tens of retirement homes with the so-called closed departments.

Before every visit, a brief consultation with the persons from selected organizations participating in the visit is carried out as a rule. Reports on the visits carried out by the Human Rights Ombudsman in the past and eventual complaints dealt with by the latter with reference with the supervised institution will be studied.

The persons from the selected organizations cooperating with the Human Rights Ombudsman in implementation of tasks and powers of the national prevention mechanism have to make a preliminary written declaration that they will participate in the performance of tasks and powers regarding instructions of the Human Rights Ombudsman and act according to the regulations on the protection of personal and confidential data in the same manner as applies to the Ombudsman, her deputies and employees.

In performing the supervision, the persons from the selected organizations act under the provisions of the Optional Protocol according to the instructions of the Human Rights Ombudsman, while holding the same powers and competencies as the representatives of the Human Rights Ombudsman.

Every person participating in the supervision shall prepare a brief written report on his/her findings and any recommendations with a view to enhancing the protection of persons deprived of their liberty, protection against torture and other forms of cruel, inhuman or degrading treatment or punishment.

Such report shall be submitted to the Human Rights Ombudsman after the performed supervision (visit). This contribution shall be part of the comprehensive report on the visit. If, however, the Human Rights Ombudsman does not agree with particular views, such a contribution within a report can be presented as a separate opinion of a selected organization.

The Human Rights Ombudsman may decide in a particular supervision case that a person from selected organizations will draw up also a comprehensive report on the performed supervision in compliance with the instructions of the Human Rights Ombudsman.

The persons from the selected organizations performing the supervision are entitled to refund of the required costs and to remuneration. For this purpose, the Human Rights Ombudsman issued the Rules on reimbursement of costs and on payment of remunerations to persons from organizations performing the tasks or exercising the powers under the provisions of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, published in the Official Gazette of the Republic of Slovenia No. 17/2008.

The Rules include the reimbursement of travel expenses and food and accommodation expenses and the right to be refunded a salary or earnings lost during the period of supervision. These costs will be refunded in the manner and in the amount as determined for civil servants (public employees).

The remunerations under these Rules include the payment for drawing up a comprehensive report

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Slovenia

Ratification: 23 January 2007 - **NPM DESIGNATED:** The **Human Rights Ombudsperson** with **NGOs**

Updated on 16 March 2009

	<p>on the performed supervision (amount EUR 100) and a symbolic earning of EUR 5 for every hour of participation in supervision.</p> <p>The experts of the national prevention mechanism shall be properly qualified and shall possess expert knowledge. To that end, the Human Rights Ombudsman organized a meeting in 2007 for persons from non-governmental organizations that will participate in the performance of supervision, where they were acquainted with the methods of the Human Rights Ombudsman's activities in this field, including the course of visits to different institutions. At the same time, the Human Rights Ombudsman invited them to participate as observers in carrying out the inspections of prisons holding persons deprived of liberty and other institutions with restricted freedom of movement, performed on the basis of provisions of the Human Rights Ombudsman Act.</p> <p>The Human Rights Ombudsman made the first visit to a supervised institution (Prevezgojni dom v Radečah - Radeče Re-education Centre) in cooperation with the persons (representatives) of non-governmental organizations on 19 March 2008.</p> <p>Up to five visits are planned for every month (April 5, May 4).</p> <p>The first experiences got in cooperation with non-governmental organizations are a good stimulation for future work. The persons form the selected non-governmental organizations contribute their part to the purpose for which the national prevention mechanism was established. This means that in the places of deprivation of liberty, treatment of persons who were deprived of liberty is checked on a regular basis in order to enhance their protection against torture and other forms of cruel, inhuman or degrading treatment or punishment.</p> <p>According to the known data, up to now Slovenia has been the only one among the European states where the Human Rights Ombudsman as a national authority has been cooperating with non-governmental organizations in the implementation of tasks and powers of the national prevention mechanism.”</p> <p>It should be noted that in December 2008 the tender was re-opened for NGOs to participate in the work of the NPM. As a result of the tender two new organizations – the Slovenian Red Cross and Primus Institute – were accepted for this task along with the Pravno – informacijski center nevladnih organizacij, which a had been accepted during the first tender. The other existing NGO, Peace Institute, reportedly left to focus on other activities.</p>
<p>SPT communications</p>	<p>Official correspondence to the SPT</p>
<p>Legal framework</p>	<p>Human Rights Ombudsman (www.varuh-rs.si)</p> <p>Human Rights Ombudsman Act</p> <p>Republic of Slovenia Constitution</p> <p>Article 5 of the Slovenian Law on Ratification of the OPCAT elaborates the relationship between the Ombudsman's Office and the NGOs in greater detail</p> <p>OPCAT ratification Law (unofficial translation)</p>

Spain

Ratification: 4 April 2006 – **NPM establishment:** pending (should have been designated before 22 June 2007)

Updated on 03 December 2008

Background information	<p>Population: 40,397,842 Area (sq km): 504,782 Prison population: 64,215 Number of prisons: 77</p> <p>Mr. Leopoldo Torres Boursalt of Spain was elected as SPT member on 18 December 2006 for a four-year term. (The Network for Torture Prevention circulated a press release contesting his designation.)</p> <p>Consideration by international and regional human rights mechanisms:</p> <p>CAT considered the report of Spain in 2002 CAT Concluding observations HCR considered the report of Spain in October 2008 HRC Concluding observations The UN Special Rapporteur on Torture, Theo van Boven visited Spain Spain report Last CPT visit January 2007 (CPT reports) Commissioner for Human Rights (Council of Europe) visited Spain in 2005 Commissioner HR visit report (2005)</p> <p>Structure:</p> <p>Spain is not a Federal State but has a significantly decentralized structure. Spain is divided into 17 autonomous communities and 2 autonomous cities.</p>
NPM designation process	<p>The NPM designation process in Spain has been characterized by the progressive construction of dialogue between government authorities responsible for NPM designation (the Ministry of Foreign Affairs, the Ministry of Justice and the Ministry of Interior), the National Ombudsman Office and ombudsman offices in the autonomous regions (particularly Catalonia and the Basque country), and NGOs, especially those grouped under the Network for the Prevention of Torture (<i>Coordinadora para la Prevención de la Tortura</i>). The academic sector and the APT have also been decisive in helping to facilitate this dialogue.</p> <p>Public discussions about OPCAT were initiated in 2004, when 37 NGOs came together under the umbrella of the Network for the Prevention of Torture to promote OPCAT ratification and the implementation of recommendations to Spain by international and regional bodies. In addition to the publication of an annual report on the situation torture, the Network has actively participated in the NPM process by drafting NPM proposals, holding bilateral meetings with authorities and participating in the collective meetings on NPMs.</p> <p>Regarding the academic sector, the Carlos III University of Spain convened the first expert's conference on OPCAT implementation in Madrid in October 2006. A variety of national actors including the government, national and regional Ombudsman institutions and NGOs attended. In June 2007, the Juan Carlos University in Madrid hosted a smaller working meeting (convened by the APT and the academic civil society organization AEDIDH) between these actors to analyse the issues of independence, transparency and decentralization of the NPM in Spain.</p> <p>The national government has for its part has been convening a series of inter-ministerial meetings to analyse implications and possibilities for NPMs, as well as bilateral consultations with relevant state and civil society actors. During a parliamentary debate, in June 2007 a resolution was approved that urges the Government to fulfil its obligations in accordance with the OPCAT. The announcement by the Minister of Justice to the Congress that the Ombudsman Office would be designated as NPM led to a public denunciation by the NGO Network and a temporary lull in the dialogue. The Spanish State officially informed the UN that they would not be able to designate the NPM by 22 June 2007 as stipulated, due to the dialogue in course.</p> <p>In parallel to discussions at the national level, in the autonomous region of Catalonia, debate on OPCAT implementation began at the time of ratification with an NGO Network event on follow-up to recommendations of the CPT, CAT and UN Special Rapporteur on Torture. Public debate on the NPM was also advanced through a number of activities organised in Barcelona by actors including, the University of Barcelona's Observatory of the Criminal Justice System, the NGO Justice & Peace and the Catalan Institute for Studies of Violence. The Catalan NGO Network for Torture Prevention also presented a proposal for a regional preventive mechanism and the Ombudsman Office of</p>

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OPCAT Country Status – Europe and Central Asia

Spain

Ratification: 4 April 2006 – **NPM establishment:** pending (should have been designated before 22 June 2007)

Updated on 03 December 2008

	<p>Catanonia (<i>Sindic de Greugus</i>) has presented another. Both proposals had already been formally presented to the local parliament even before the NPM proposals had been advanced on a national level, thus influencing the national process.</p> <p>On 30 October 2007, the Ministries of Foreign Affairs, Justice and Interior convened the first official national meeting to discuss the conformation of the NPM. Representatives of these ministries, the ombudsman office, NGOs, the academic sector and Spanish experts on UN human rights bodies (including the SPT) were present. During the meeting, the NPM proposals by various actors were finally made public. Two working groups were created (one on structure and composition and the other on faculties) to advance on discussions until the next meeting is convened on 19 December 2007.</p> <p>In September 2008, representatives from the Spanish Ombudsman and the NGO Network participated in the event co-organized by the Argentinean Ministries of Foreign Affairs and Justice, the APT and CEJIL, on the implementation of the OPCAT in Federal and Decentralized States. One month later, the NGO Network wrote a letter to the President of the Spanish Government, calling for the continuation of the process of consultation on the NPM designation. In its answer to the NGO Network, the government committed to the prompt establishment of the Spanish NPM, in the framework of the national human rights plan of Spain. The government also committed to send the draft NPM proposal to the relevant and interested actors for consultation.</p> <p>After the examination of its report in October 2008, the Human Rights Committee recommended Spain to speed up the process of adoption of its NPM, taking into account the recommendations of international bodies and experts, and the opinion of the civil society organisations participating in the fight against torture.</p>
<p>NPM options</p>	<p><u>Existing monitoring mechanisms</u></p> <p>The national Ombudsman (<i>Defensoría del Pueblo</i>) and the Ombudsman's Office in the Autonomous Communities are granted the powers of visiting places of detention. In addition, some of the organisations of the civil society, including those gathered around the Network for Prevention of Torture (<i>Coordinadora para la Prevención de la Tortura</i>) visit places of detention.</p> <p><u>Proposed NPM options</u></p> <p>The Spanish Government has announced that the dialogue to define the NPM is still open but that they have come to agreement on two premises for the model: 1) the NPM will be designated by law and 2) the NPM will be a "mixed" model, with involvement of the Ombudsman Office and civil society.</p> <p>The National Ombudsman Office has made public its own proposal to be designated as NPM, with the creation of an Advisory Council of civil society to support its work but not accompany its visits to detention places (Ombudsman proposal). Previously, the Catalan Ombudsman Office had also put forth a proposal to be part of the NPM, along with the National Ombudsman and a civil society advisory council (Catalan ombudsman proposal).</p> <p>For their part, civil society organizations have insisted on the creation of a new NPM to ensure some value added and take advantage of the historical opportunity presented by the OPCAT to prevent torture. They have presented a document with some minimum demands to be included in the NPM (Document Spanish NGOs). The NGO Network has presented a proposal for such a new body (NGO proposal). The Catalan NGO Network has made a proposal for a local body for Catalonia, which has authority over certain places of detention such as prisons, police stations and juvenile detention centres. (Catalan NGO proposal). The NGO Network has also made public its opposition to the designation of the Ombudsman Office as NPM.</p>
<p>SPT communications</p>	<p>Official correspondence to the SPT on the NPM designation</p>
<p>Legal framework</p>	<p><i>No NPM establishment law has been adopted yet.</i></p>

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OPCAT Country Status – Europe and Central Asia

Sweden

Ratification: 14 September 2005 - **NPM DESIGNATED – Parliamentary Ombudsman and Chancellor of Justice**

Updated on 13 February 2009

<p>Background information</p>	<p>Population: 9,016,596 Area (sq km): 449,964 Prison population: 7450 Number of prisons: 86</p> <p>While prison conditions generally meet international standards, overcrowding and lengthy pre-trial detention periods remained problems, particularly in the Stockholm region. The CPT 2004 report, stated authorities should work to assure a proper balance between the needs of criminal investigations and the restrictions placed upon pre-trial detainees.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>SPT visited Sweden in March 2008 and the report is public SPT report to Sweden, as well as the answers to the report Replies from Sweden</p> <p>CAT examined Sweden in April 2008 CAT Concluding observations</p> <p>CPT visited Sweden in 2004 CPT visit report</p> <p>Commissioner for Human Rights (Council of Europe) published its follow-up report to its recommendations made in 2004 Commissioner HR follow-up report (2007)</p>
<p>NPM designation process</p>	<p>The ratification bill of the OPCAT (Prop.2004/05:107, Svensk godkännande av fakultativt protokoll till FN:s convention mot tortyr m.m.) included a proposal for the designation of the NPM according to which two of the various existing ombudspersons offices in Sweden, the Parliamentary Ombudsman (<i>Riksdagens Ombudsmän</i>) and the Chancellor of Justice (<i>Justitiekanslern</i>) would be designated as Sweden's NPM. In addition, Sweden passed some amendments to the Act on the undertakings of Sweden against Torture (1988.695), which enshrined the mandate of the CPT. This Act is now mandating the SPT with similar powers.</p> <p>At the time of the discussion of the OPCAT bill, the government provides that the mandate of both institutions were fully compliant with OPCAT criteria, which did not require any amendment to their legal basis or additional resources to act as NPMs. However, the two institutions concerned presented submissions to the parliament wherein they objected to being designated as the NPM, due to mainly a lack of resources, and a mandate considered as inadequate. In particular, the Parliamentary Ombudsman objected to its designation as part of the NPM owing to both a constitutional concern related to the one-sided manner in which the government was perceived to have delegated this function to the institution, which was deemed to have contradicted its principle of absolute independence from the government, as well as due to failure of the government to allocate the institution any additional resources in order to undertake the additional OPCAT-related work. Similarly, the Chancellor of Justice was also said to have objected to its designation as part of the NPM due to its limited human and financial resources. This office also informed the APT in late May 2008 that, although on paper the institution has far-reaching powers which are compliant with the OPCAT, in practice it does not perform regular inspections of places of detention.</p> <p>In spite of these objections, the OPCAT ratification and implementation bill was adopted by the Parliament, designating the two institutions as NPM and no legislative and financial changes were made.</p> <p>According to the SPT visit report, the representatives of the Ministry of Justice agreed upon the possibility of revisiting the designation decision in the future, in the situation the two NPM designated are not complying with their OPCAT obligations.</p> <p>The SPT also reported that some NGOs, while expressing the view that they had been adequately consulted, maintained that the NPM should be a newly established institution rather than the designated pre-existing ones. For other NGOs, this remained an open question while stating at the same time that the current situation was not satisfactory.</p>
<p>NPM options</p>	<p>The two officially designated NPMs are the Parliamentary Ombudsman and the Chancellor of Justice.</p> <p>The Parliamentary Ombudsman's Office is the oldest of such institutions in the world, dating back to 1809, and as is characteristic of such institutions, a complaint to the Parliamentary Ombudsman's Office can be made by anybody who feels that he or she or someone else has been treated wrongly</p>

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OPCAT Country Status – Europe and Central Asia

	<p>or unjustly by a public authority or an official employed by the civil service or local government. There are four Parliamentary Ombudsmen who receive annually some five thousand complaints concerning a diversity of state institutions including the police and prisons and probation. The Ombudsmen can react in response to a legitimate complaint by issuing recommendations to the public authorities and, in more serious cases, by acting as a prosecutor and taking the individual at fault to court (see also Finland). In addition, an Ombudsman who feels that a law needs to be changed can propose this to Parliament or to the government.</p> <p>The Parliamentary Ombudsman's Office in Sweden unquestionably enjoys considerable standing and authority in the eyes of society. Nonetheless, it may prove to fall short of the OPCAT minimum criteria on a number of grounds, including: its limited resources to undertake regular, preventive visits; the reactive nature of visits on the basis of legal complaints; and the mono-professional composition of their staff. On this latter issue, the Ombudsmen's Office is comprised of lawyers and the visits to places of detention are carried out by one of the four Ombudsmen, accompanied by his team. The Ombudsmen's Office informed the SPT about their lack of medical expertise and they do not contract external experts.</p> <p>The Ombudsmen reiterated to the SPT their reluctance to assume the NPM mandates for the reasons mentioned above, and they do not consider themselves as the NPM.</p> <p>On the other hand, the Chancellor of Justice is appointed by the government but the mandate holder does not receive any instruction from the latter. Although the Chancellor of Justice is lacking of resources, has a staff mainly comprised of lawyers, and the visits carried out are more reactive than preventive, the institution informed the SPT that it would be in position to assume the NPM mandate if sufficient resources were allocated to his tasks. In that case, the Chancellor of Justice could envisage creating an investigative and multi-disciplinary team.</p> <p>During its examination of Sweden's fifth periodic report in April 2008 the UN Committee against Torture stated the following: <i>"The Committee notes that the State party has designated the Parliamentary Ombudsman's Institution and the Chancellor of Justice as its national preventive mechanisms (NPMs) under the OPCAT. However, it expressed its concern at the fact that these institutions are reactive, not preventive, in nature, that neither organisations have multi-professional staff and that the Government has not allocated any additional resources which would allow these institutions to deal with the new tasks, as it has been brought to the Committees' attention by the NPMs themselves.</i></p> <p><i>The Committee recommends that the State party should re-examine the decision taken by the Swedish Government to designate the Parliamentary Ombudsman's Institution and the Chancellor of Justice as the Swedish NPMs or, alternatively, ensure their effective functioning as preventive mechanisms by, inter alia, allocating the necessary resources in order to ensure that it meets the requirements under the OPCAT."</i></p> <p>Due to the <i>"lack of additional resources, constitutionality challenges and the perception that the two designated institutions have of themselves and their methodologies (...)"</i>, the SPT considers in its report on its visit to Sweden that the NPM designation might <i>"influence the prospect of a comprehensive and effective prevention work in Sweden under the OPCAT"</i>.</p> <p>However, in its responses to the SPT report, the Swedish government</p>
Legal framework	<p>Parliamentary Ombudsman's Office (www.jo.se)</p> <p>Chancellor of Justice (www.jk.se)</p>

OPCAT Country Status – Europe and Central Asia

Switzerland

Signature: 25 June 2004 - **Ratification:** under consideration

Updated on 22 December 2008

Background information	<p>Population: 7,523,934 Area (sq km): 41,290 Prison population: 6111 Number of prisons: 122</p> <p>Switzerland is a federal state composed of 26 cantons that retain attributes of sovereignty, such as fiscal autonomy and the right to manage internal cantonal affairs. Under the 2000 Constitution, cantons hold all powers not specifically delegated to the federation. The administration of justice is primarily a cantonal function. The cantons regulate local government. The basic unit of local government, which administers a village, town, or city, is the commune or municipality. Cantons are subordinate to federal authority but keep autonomy in implementing federal law.</p> <p>The cantons are responsible for handling most criminal matters, and procedures vary. The federal police office has a coordinating role but relies on the cantons for actual law enforcement. The federal attorney general in Bern oversees intercantonal and international crimes.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>CAT considered Switzerland in 2004 CAT Concluding observations</p> <p>CPT visited Switzerland in September 2007 CPT report and government response</p> <p>Commissioner for Human Rights (Council of Europe) visited Switzerland in 2005 Commissioner HR visit report (2005)</p>
OPCAT ratification and NPM designation processes	<p><u>Financial considerations</u> :</p> <p>Almost all of the twenty-six Cantonal governments agreed that Switzerland should ratify OPCAT. At the outset, all but three Cantons preferred a single federal entity rather than a multiplicity of cantonal authorities. Faced with the prospect of having themselves to pay for cantonal NPMs, the three Cantons ultimately decided that recognizing federal jurisdiction would be preferable. In Switzerland it is theoretically possible for one Canton to block such an arrangement if Cantonal legislation is needed to implement the treaty.</p> <p><u>Process</u></p> <p>Switzerland had historically be behind the OPCAT and strongly supported its drafting and adoption, and it signed the instrument in June 2004. However, ratification can only occur once legislation setting up the NPM has been adopted by parliament. Regrettably, the process for the adoption of this law has been very slow. A first draft on possible options for the establishment of an NPM was drafted by a federal interdepartmental Working Group, led by the Federal Office of Justice. This first draft was submitted to an initial round of unofficial consultations in 2005. It was then officially presented for consultation to all interested actors with a deadline for feedback by the end of December 2005.</p> <p>At the time almost all of the twenty-six Cantonal governments agreed that Switzerland should ratify the OPCAT. Moreover, from the outset all but three of the Cantons preferred a single federal entity, rather than a multiplicity of Cantonal monitoring mechanisms. However, faced with the prospect of having themselves to pay for separate NPMs at the level of the Cantons, the three cantons ultimately decided that recognizing federal jurisdiction would be a preferable arrangement.</p> <p>The results of the consultation process were considered by the Federal Office of Justice (Consultation results).</p> <p>Some comments have been made to the initial proposal by a wide range of organisations. On that basis, a new proposal (in Switzerland, referred to officially as “<i>message</i>”) on ratification and implementation was officially adopted by the Swiss Government, Federal Council, and transmitted to Parliament on 4 December 2006. The proposal took into account some of the comments made during the consultation process, including the right for the Commission to have direct contact with the Sub-Committee. The definition of deprivation of liberty has been revised to include the notions of “at instigation or with consent of the authorities”. This proposal has been adopted by the Swiss parliament’s lower chamber, Council of States. On 18 December 2008, the upper chamber adopted the proposal with some amendments. The newly amended OPCAT ratification and implementation law has now to be adopted by the lower chamber of the Parliament.</p>
NPM options	<p>The draft law proposed the creation of a single national body under existing federal authority called the national Commission for the Prevention of Torture. This option was favoured based on the following factors:</p> <ul style="list-style-type: none"> • There existed Cantonal support;

Shaded boxes: States Parties to the OPCAT

Unshaded boxes: States that have signed the OPCAT or are due to sign it in a near future

Switzerland

Signature: 25 June 2004 - **Ratification:** under consideration

Updated on 22 December 2008

- Greater efficiency;
- Reduced costs;
- Attainment of uniform standards/law;
- Speedier procedure towards ratification.

Monitoring powers and mandate

The draft law repeats some of the specific elements set out in the Optional Protocol itself, especially regarding the powers and guarantees of the NPM. The law also adopted a broad definition of deprivation of liberty, as mandated by OPCAT, which would include prisons, police stations, asylum-seeker detention centres, psychiatric establishments as well as homes for the elderly. The draft law also specifically mentions the possibility of unannounced visits.

Membership

The draft law foresees that the Federal Council (the executive governing body) would appoint the 12 members of the NPM on recommendation of the Federal Office of Justice and the Department of Foreign Affairs. NGOs could also propose their candidates to these offices. In addition, the article regarding the professional competences of the members has been slightly redrafted in the revised draft proposal, mentioning specific areas of expertise such as: medicine, law, psychiatry, intercultural issues or expertise relevant to deprivation of liberty.

Financial resources

The initial proposal provided limited financial resources to the NPM, where the members would have been unpaid volunteers. There would have been no secretariat staff and no proper offices for the NPM. This approach - seeking to have a “cost-free” body - was the primary focus of criticism during the process of consultation, not only from NGOs, but also from numerous Cantons and political parties. However, some amendments to the initial proposal have been made on the basis of the comments made to the draft law mentioned previously. The most important change concerns the financing of the NPM, as indemnities for the members of the Commission are now foreseen (on the basis of 300 CHF/day; 20 days’ work/year for each member). However, the other main criticism has not been taken into account and the Federal Council maintains its refusal to establish a permanent Secretariat and offices for the Commission.

Selection process of the NPM members

The CPT visited Switzerland in 2007, and welcomed the NPM draft law. However, the CPT expressed some concerns regarding the process of selection of the NPM members, who would be nominated by the Federal Council (*Conseil fédéral*), further to the proposal of the Federal Justice Department and the Federal Foreign Affairs Department. To ensure the perception of independence of the future NPM, the CPT recommended that the selection process should be transparent, including a public call for candidates.

In its response to the CPT, Switzerland mentioned that “the members of the NPM would be nominated by the Federal Council, which cannot take arbitrary decisions.” According to the Swiss government, the criteria for selection of members; the duration of the mandate; the principle of independence of the commission and its members in the article 4 of the draft law; would ensure the independence of the commission. Switzerland also ensured that a public call for candidates will take place to select the NPM members.

The revised draft proposal includes the right for the Commission to have direct contact with the UN Subcommittee on Prevention of Torture (SPT). A new article entitled “Duties of the authorities” has been included and provides for the obligation to publish and disseminate the annual report as well as to examine and take position on the proposals submitted by the Commission.

Legal framework

No NPM establishment law has been adopted yet.

[Message](#)

[Draft law](#) proposed with the message.

OPCAT Country Status – Europe and Central Asia

Turkey

Signature: 15 February 2006 - **Ratification:** under consideration

Updated on 22 June 2009

Background information	<p>Population: 70,413,958 Area (sq km): 780,580 Prison population: 65 458 Number of prisons: 446</p> <p>The US State Department reported that as of 2005 members of the security forces continued to torture, beat, and otherwise abuse persons regularly. The Turkish National Police (TNP), under interior ministry control, is responsible for security in large urban areas. The Jandarma, paramilitary forces under joint interior ministry and military control, is responsible for policing rural areas. The Jandarma is also responsible for specific border sectors where smuggling is common; however, the military has overall responsibility for border control. In December 2004 parliament adopted legislation calling for the establishment of judicial police, who were to take direction from prosecutors during investigations. The judicial police had not been established by the end of 2005. civil defence force known as the village guards is less professional and disciplined than other security forces and is concentrated in the southeast.</p> <p>Conditions in many prisons remained poor. Under-funding, overcrowding, and insufficient staff training were problems. While the government permitted prison visits by representatives of some international organizations, such as the European Committee for the Prevention of Torture (CPT), domestic nongovernmental organizations (NGOs) did not have access to prisons.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>CAT considered Turkey in 2003 CAT Concluding observations CPT visited Turkey in May 2007 CPT report Commissioner for Human Rights (Council of Europe) visited Turkey in 2003 Commissioner HR visit report (2003)</p>
OPCAT ratification and NPM designation processes	<p>It is important to note that in recent years there have been a number of initiatives in Turkey to promote the ratification and implementation of the instrument. Two notable national human rights organizations had campaigns devoted exclusively to OPCAT or which have a significant OPCAT component in the period 2006-2008, namely the Human Rights Foundation of Turkey and the Foundation for Society and Legal Studies. Moreover, the issue has also been addressed by the EU. The European Commission's Technical Assistance Information Exchange Instrument (TAIEX) sponsored a two-day seminar on the subject on 22-23 May 2008. Various Turkish and international actors attended the seminar, including representatives of the UN Subcommittee on Prevention of Torture and the APT. Several delegates also stressed that it was imperative that an inclusive national dialogue takes place on this issue of Turkey's future visiting body.</p>
NPM options	<p>While certain actors believed that Turkey required a completely new monitoring mechanism for the purpose of the OPCAT, others were of the opinion that existing bodies could possibly be modified to function as the NPM.</p> <p>In late May 2009 the APT was informed that the Turkish authorities had drafted legislation which would establish a NHRI. The said institution would also reportedly act as the country's NPM. Civil society actors expressed concern about the draft legislation, as they had not been consulted about the law and the proposal to establish such a body in Turkey. Moreover, they complained that the law had not been made public.</p>
Legal framework	<p><i>No NPM establishment law has been adopted yet.</i></p>

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Ukraine

Ratification: 19 September 2006 - **NPM establishment:** due to have taken place before 19 September 2007

Updated on 01 October 2008

Background information	<p>Population: 46,710,816 Area (sq km): 603,700 Prison population: 165,716 Number of prisons: 182</p> <p>The US Department of State reports that as of 2005, police frequently employed severe violence against persons in custody; that during an October 11, 2005, meeting with representatives from the Council of Europe, Human Rights Ombudsman Nina Karpachova acknowledged that torture continued to occur in pre-trial detention facilities; and that there were multiple and credible reports from human rights NGOs and diplomats that authorities regularly abused refugees at refugee detention centres. Conditions in pre-trial detention facilities were harsher than in low and medium security prisons. During 2005, the government increased efforts to prosecute police alleged to have abused detainees. According to the Ukrainian Psychiatric Association, the Ministry of Health did not always cooperate with human rights groups attempting to monitor abuse of psychiatry.</p> <p>Although prison conditions remained poor, they continue to improve slowly as a result of reforms in the penal system, which are easing overcrowding. The US Department of State reports that as of 2005, the government allowed prison visits by human rights observers and granted full access to prisons and pre-trial detention facilities, and that the Ukrainian Red Cross had said that, unlike in the past, all of its prison and pre-trial detention centre access requests were granted. Prisoners and detainees are permitted to file complaints with the ombudsman for human rights about the conditions of detention, but human rights groups reported in 2005 that prisoners were sometimes punished for doing so.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>Last CPT visit: October 2005 (CPT reports)</p> <p>CAT considered Ukrainian report in May 2007 CAT Concluding observations</p> <p>Human Rights Committee: Concluding observations (2006)</p> <p>Commissioner for Human Rights (Council of Europe) visited Ukraine in 2007 Commissioner HR visit report (2007)</p>
NPM designation process	<p>Ukraine's initial signature of the OPCAT in September 2005 came as somewhat of a surprise to domestic human rights actors, particularly as there had reportedly not been any national-level discussion or related indication that signature was being considered by the authorities.</p> <p>The effective implementation of the instrument in Ukraine is unlikely to be a straightforward affair. In late November 2005 the OSCE's Office for Democratic Institutions and Human Rights and the OSCE Project Coordinator in Ukraine organized the first national round-table discussion to address the all-important issue of ratification and effective implementation of the instrument, to which the APT was invited to participate in an expert capacity. A further broad meeting was held on this matter in mid-December 2006, which is said to have concluded that the NPM should somehow be placed with the office of the Ukraine's Parliamentary Commissioner for Human Rights.</p> <p>It is expected that the question of Ukraine's NPM will also arise at an international conference scheduled to be held in Sudak in Crimea in early October 2008, which seeks to promote the concept of independent monitoring of places of detention. The two-day event, which will be attended by the APT, is being co-organized by several actors including the OSCE Project Coordinator in Ukraine, Ministry of Internal Affairs, Kharkiv Institute for Social Research and the UK-based Independent Custody Visiting Association. Although there exist various monitoring bodies in the country (see below), it is not yet known which type of body will be designated or established as the NPM under the OPCAT.</p>
NPM options	<p>Ukraine's Parliamentary Commissioner for Human Rights may appear to be the most obvious existing monitoring mechanism which might be potentially designated as an NPM under the OPCAT. This institution was established in 1998 and has a mandate to investigate a wide range of complaints, including violations of a socio-economic nature. On paper the office also has considerable powers to enter a range of closed institutions, although in practice there have been many concerns regarding the regularity of visits, diminishing the deterrent factor of such inspections. In addition, the institution in its current form does not seem to be held in particularly high esteem in human rights circles. Thus, it remains to be seen whether the Ukraine's Parliamentary Commissioner for Human Rights can effectively take on the NPM function.</p>

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Ukraine

Ratification: 19 September 2006 - **NPM establishment:** due to have taken place before 19 September 2007

Updated on 01 October 2008

Lamentably, there currently exist no other monitoring mechanisms in Ukraine, which possess the minimum criteria laid down in the Optional Protocol text with regard to an NPM, a conclusion which was very much apparent from the November 2005 national round-table in Kyiv.

However, there have been domestic efforts aimed at establishing a system of monitoring of places of police detention through so-called “mobile police groups”. The overall project, which is generally referred to as the ‘Mobile Groups Project’, seeks to create localized monitoring bodies, comprising civil society representatives and public officials, to inspect police detention facilities. The OSCE Project Coordinator in Ukraine is said to be actively supporting this project, which has produced some positive results.

It was notable that the UN Committee against Torture also commented on the establishment of the mobile police groups during its examination of Ukraine’s fifth periodic under the UN Convention against Torture in May 2007. The CAT stated: *“While the establishment throughout the State party of “mobile groups”, composed of representatives of civil society and staff of the Ministry of Interior, with the mandate to visit police detention facilities, monitor the situation of detainees and prevent acts of torture is a positive development, the Committee remains concerned about their dependency on the good will of local authorities, the lack of formal status given to them as well as with the lack of adequate resources.”* The Committee therefore recommended that Ukraine *“(…) establish a formal status for the “mobile groups”, provide them with a strong mandate, guarantee their independence and provide them with adequate resources. The State party should also inform the Committee on measures taken to set up a national preventive mechanism in accordance with the Optional Protocol to the Convention.”*¹⁸

Legal framework

No NPM establishment law has been adopted yet.

¹⁸ UN Doc. CAT/C/UKR/CO/5, 18 May 2007 – paragraph 12.

United Kingdom

Ratification: 10 December 2003 - **NPM designation:** 18 bodies, coordinated by Her Majesty's Inspectorate for Prisons

Updated on 6 May 2009

<p>Background information</p>	<p>Population: 60,609,153 Area (sq km): 244,820 Prison population: 88,458 Number of prisons: 159</p> <p>The United Kingdom is a constitutional monarchy with a democratic, parliamentary government. It is not a federal State but has a significantly decentralized structure in respect of Scotland, Wales, and Northern Ireland. The United Kingdom has been one of the strongest supporters of the OPCAT internationally, both in its diplomatic efforts and in funding the development of technical assistance materials.</p> <p>In Great Britain, regional police forces (44 in England and Wales and 8 in Scotland) are responsible for maintaining law and order. In Northern Ireland the Police Service of Northern Ireland (PSNI) has that responsibility. In some areas of Northern Ireland, army units reinforce the PSNI.</p> <p>SPT: Mrs Sylvia Casale, was elected as SPT member on 18 December 2006 for a two-year term as SPT President and she was re-elected on 30 October 2008 for a four year-term.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>CAT examined United Kingdom in 2004 CAT Concluding observations</p> <p>CPT visited United Kingdom in 2005 CPT visit report</p> <p>Commissioner for Human Rights (Council of Europe) visited United Kingdom in 2005 Commissioner HR visit report (2005)</p>
<p>NPM designation process</p>	<p>Prior to signing the OPCAT, the Human Rights Department of the UK Foreign & Commonwealth Office reportedly consulted all national government departments likely to be affected by the instrument, independent statutory authorities and the devolved administrations in Scotland, Wales and Northern Ireland. The national government concluded from this consultation process that various UK monitoring mechanisms required for the purpose of OPCAT implementation were already in place and no new mechanism needed to be created. The relevant government authorities subsequently gave their consent to ratification, which took place in December 2003. The UK was required to establish its NPM one year after the entry into force of the OPCAT, i.e. by 20 June 2007.</p> <p>In 2006 and 2007 the UK authorities initiated a process of consultation with various actors on this issue, including the mechanisms which may comprise the NPM as well as civil society. To this end the UK's Department for Constitutional Affairs, now the renamed Ministry of Justice, which has the responsibility for the instrument in the UK, organized an initial meeting in London on 14 March 2006 of the bodies likely to be designated as the UK NPM. According to a representative of the then Department for Constitutional Affairs, this meeting concluded that the NPMs were, by and large, compliant with the OPCAT text.</p> <p>Representatives of civil society and academia were also brought into this process later in the year when the then Department for Constitutional Affairs convened a meeting in London on 13 June 2006 to consider whether the national visiting mechanisms fully met the necessary criteria, as stipulated in the instrument's text. A range of UK-based NGOs and government officials were invited to the meeting to express any concerns they had regarding possible shortfalls in this respect. In advance of the meeting the APT submitted a list of possible issues for discussion, which was used as a point of reference during the exchange. In contrast to the NPM meeting of March 2006 this second meeting clearly revealed that the challenge of implementing OPCAT was not as straightforward as it had been thought. A further meeting on the implementation of the OPCAT, which took place in London on 29 June 2007, also reached a similar conclusion.</p> <p>On 26 November 2007 the Ministry of Justice and the Law School at the University of Bristol held a one-day meeting devoted to these and other challenges relating to the UK's NPM. An APT representative attended and spoke at this meeting, from which it was clear that many of the issues, referred to above, remained unaddressed. The event titled '<i>Implementation of the OPCAT in the United Kingdom: The National Preventive Mechanism</i>' looked at a range of issues including the process of designation and operation of the NPM as well as its conformity with the minimum standards stipulated in the OPCAT text. Representatives from many of the 30 or so individual mechanisms, which were then expected to form the overall NPM, attended the seminar (Proceedings of the seminar).</p>

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United Kingdom

Ratification: 10 December 2003 - **NPM designation:** 18 bodies, coordinated by Her Majesty's Inspectorate for Prisons

Updated on 6 May 2009

	<p>In early February 2008 the APT travelled to Edinburgh to discuss the implementation of the OPCAT in Scotland. During the visit the organization met several institutions currently monitoring places of detention in the country.</p> <p>Issues raised during the process</p> <p>The establishment of an NPM comprising numerous mechanisms inevitably raised several important issues. Most of them arose at a meeting hosted by the Ministry of Justice with the potential national monitoring bodies to be designated as the UK's NPM in June 2007, including:</p> <ul style="list-style-type: none"> - the challenge of coordinating the activities of the NPM's constituent parts - producing an annual report - liaising with the Subcommittee on Prevention <p>In addition, the Ministry of Justice realised in the process of setting up the NPM that there was no regular, systematic, independent preventive inspection programme for police cells and police stations in the UK. The resolution of the issues mentioned above and the absence of such a monitoring system delayed the designation of the NPM in the UK.</p>
<p>NPM options</p>	<p>The UK government was initially expected to designate approximately 30 existing mechanisms as the NPM, which have responsibility for various types of detention facilities in England and Wales, Scotland and Northern Ireland. For example, in England and Wales alone these might have included the following bodies:</p> <ul style="list-style-type: none"> • Prisons: Her Majesty's Inspectorate of Prisons, Prisons and Probation Ombudsman and Independent Monitoring Boards; • Young peoples secure centres: Commission for Care Standards Improvement; • Police cells: police custody visitors, Independent Police Complaints Commission and the Justice, Community Safety and Custody Inspectorate; • Court cells: Justice, Community Safety and Custody Inspectorate and lay visitors to court cells; • Court cells for court escorts and holding areas: Community Safety and Custody Inspectorate and lay visitors to court cells; • Psychiatric hospitals: Mental Health Act Commission; • Immigration removal centres (UK wide): Her Majesty's Inspectorate of Prisons, Prisons and Probation Ombudsman, Independent Monitoring Boards; • Immigration short-term holding facilities: Her Majesty's Inspectorate of Prisons and Independent Monitoring Boards; • Military Corrective Training Centre at Colchester: Her Majesty's Inspectorate of Prisons (by agreement with the Ministry of Defence, non-statutory) and Independent Monitoring Boards; • Military (camp) police cells: Adjutant-General. <p>A similar plethora of national mechanisms are responsible for facilities in Scotland and Northern Ireland.</p> <p>As well as diversification by geography and by types of detention, there also functional diversifications of oversight bodies. For instance, there are various local, national and European levels of independent inspections in the UK.</p> <p>The UK Ministry of Justice finally appointed 18 existing oversight bodies as the UK NPM, through a written ministerial statement which it issued in March 2009.</p>
<p>NPM functioning</p>	<p>Composition</p> <p>England and Wales</p> <ul style="list-style-type: none"> • Her Majesty's Inspectorate of Prisons (HMIP) • Independent Monitoring Boards (IMB) • Independent Custody Visiting Association (ICVA) • Her Majesty's Inspectorate of Constabulary (HMIC) • Care Quality Commission (CQC) • Healthcare Inspectorate of Wales (HIW) • Children's Commissioner for England (CCE)

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United Kingdom

Ratification: 10 December 2003 - **NPM designation:** 18 bodies, coordinated by Her Majesty's Inspectorate for Prisons

Updated on 6 May 2009

- Care and Social Services Inspectorate Wales (CSSIW)
- Office for Standards in Education (OFSTED)

Scotland

- Her Majesty's Inspectorate of Prisons for Scotland (HMIPS)
- Her Majesty's Inspectorate of Constabulary for Scotland (HMICS)
- Scottish Human Rights Commission (SHRC)
- Mental Welfare Commission for Scotland (MWCS)
- The Care Commission (CC)

Northern Ireland

- Independent Monitoring Boards (IMB)
- Criminal Justice Inspection Northern Ireland (CJINI)
- Regulation and Quality Improvement Authority (RQIA)
- Northern Ireland Policing Board Independent Custody Visiting Scheme (NIPBICVS)

Coordination

Her Majesty's Inspectorate of Prisons will assume the NPM coordination role for the 18 bodies. The scope of the coordination and the functioning is still to be determined.

SPT communications

[Official correspondence to the SPT](#) on the designation of the NPM (3 November 2008).

Legal framework

[Ministerial written statement](#) (30 March 2009, Ministry of Justice)

OPCAT Country Status

Middle East & North Africa

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OPCAT Country Status – Middle East & North Africa

Lebanon

Accession: 22 December 2008- **NPM designation:** under consideration

Updated on 29 June 2009

<p>Background information</p>	<p>Population: 4 million Area (sq km): 10,452 sq km Prison population: 5,870 Number of prisons: 30</p> <p>Lebanon acceded to the UNCAT in October 2000 without any reservations, but did not recognize the competency of the CAT under article 21 and 22. The initial report to the CAT is due since October 2001.</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>Special Rapporteur on extrajudicial, summary or arbitrary executions, visited Lebanon and Israel, following October 2006 war.</p>
<p>OPCAT ratification process</p>	<p>Lebanon acceded to the OPCAT on 22 December 2008, although the government had expressed its interest in becoming Party to the OPCAT since 2006. The government had at that time requested the authorization from the Parliament to ratify the OPCAT (decree n° 177729, dated 25.09.06). After a long period without any session due to political deadlock, the Parliament finally authorized the OPCAT ratification during one of its first sessions (law no 12 of 5 September 2008).</p> <p>Several actors were central in ensuring the ratification of the OPCAT in Lebanon. In first place, the members of the Parliament, more particularly the members of the Committee on Human Rights, played a key role in obtaining the ratification. Secondly, local NGOs, including members of the Working Group against Torture (composed of Association Libanaise pour l'Education et la Formation, Centre Libanais des Droits Humains), Human Rights Watch – Beirut Office, Kham Rehabilitation Centre, Restart Centre for Rehabilitation of Victims of Violence and Torture, Public Interest Advocacy Center (PINACLE)) encouraged the government to ratify, through regular recommendations and national workshops on the OPCAT. In addition, The Middle East Council of Churches also campaigned for the prompt ratification of the instrument.</p>
<p>NPM designation process</p>	<p><u>Existing monitoring mechanisms</u></p> <p>There is not a system of systematic and preventive detention monitoring in Lebanon. However, some places of detention, in particular prisons and immigration centers are regularly visited by Lebanese NGOs. The main purpose of these visits is to deliver humanitarian, psychological and social services rather than conducting preventive monitoring.</p> <p>The Government of Lebanon also granted the right to visit places of detention to the International Committee of the Red Cross.</p> <p>Different projects are under way to establish national human rights institutions. On one hand, a law to establish an Ombudsman's Office has been passed, but has not been implemented yet. On the other hand, the Lebanese Human Rights Action Plan under consideration by the Human Rights Committee of the Parliament indicates that a project on establishing a national human rights commission is in its final stage.</p> <p><u>Designation process</u></p> <p>The NGO Working Group against Torture (see above), jointly with the APT, aims at encouraging a transparent and participative decision making process. For this purpose, these organizations held a seminar on NPM requirements and possible OPCAT implementation in Lebanon in March 2009. The participants of this workshop examined different NPM options and formulated a set of recommendations.</p> <p>The NGO group continued to meet in the following months at the regional office of OHCHR to develop the NPM proposals further. On 14 March 2009, a meeting on OPCAT implementation took place at the UN house in Beirut. Representatives of key government offices and services participated, including high ranking law enforcement officers. The meeting discussed the two NPM options currently under consideration. It was suggested that the Ministry of Justice set-up a follow-up committee - OHCHR, APT and local NGOs all stressed importance of CAT implementation and submission of initial report to the Committee against Torture.</p> <p>The deadline for the designation of the NPM in Lebanon is 22 January 2010. On 23 June 2009 the Minister of Justice created a committee through the decree n. 2036, tasked with drafting legal articles and establishing the NPM in order to fulfil with its obligation under the OPCAT. The Committee is expected to submit a final draft law by 30 September 2009. The Committee is</p>

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OPCAT Country Status – Middle East & North Africa

Lebanon

Accession: 22 December 2008- **NPM designation:** under consideration

Updated on 29 June 2009

	presided by a judge of the Ministry of Justice and comprised of representatives from the Ministry of Interior, the parliament, the Lebanese bar association, national NGOs, the OHCHR, the UNHCR and the ICRC.
NPM options	<p>Two options have emerged from civil society consultations. The first is to create a 'Committee for the Protection of the Rights of Detainees and Persons Deprived of their Liberty' with the aim of improving the treatment of these groups, strengthening their protection against torture and other cruel, inhuman or degrading treatment or punishment, preventing such practices, as well as improving the conditions of detention in all places of detention. The current draft proposal foresees a committee of five independent members from different professional backgrounds. It has been drafted by a group of civil society experts.</p> <p>The second proposal is to create a National Human Rights Institution with a broad human rights mandate, including explicitly the mandate of the National Preventive Mechanism. The proposal has been drafted by the Public Interest Advocacy Centre Lebanon (PINACLE).</p>
Legal framework	<i>No NPM establishment law has been adopted yet.</i>

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OPCAT Country Status – Middle East & North Africa

Morocco

Ratification: under consideration

Updated on 11 February 2009

Background information

Population: 32 million
Area (sq km): 446'000 sq km
Prison population: 53,580
Number of prisons: 59

Consideration by international and regional human rights mechanisms

Morocco was considered by the HRC in the framework of the UPR in April 2008 [Report of the Working Group](#)

OPCAT ratification process

In March 2007, Morocco publicly announced its intention to ratify the OPCAT as a priority, and it claimed having almost completed the process leading to signature and ratification of the OPCAT, on the occasion of a session of the Human Rights Council in Geneva. The Kingdom of Morocco reiterated its commitment to the Human Rights Council in the framework of the Universal Periodic Review in February 2008: *“The Kingdom of Morocco is in the process of acceding to the first Optional Protocol to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.”* (§ 56). The ratification of OPCAT is also among the recommendations made to Morocco by other states (recommendation 2) and supported by the Kingdom ([UPR outcome](#)).

However, internal processes for achieving the adherence of Morocco were still under way in February 2009.

The APT has actively lobbied for the ratification and conducted a first in-country visit to Morocco in [May 2006](#), followed by further missions in April 2007 and [October 2007](#) and several missions in 2008. During each of the missions, all governmental interlocutors ensured the APT of their support to the OPCAT. The campaign for the ratification of the OPCAT is supported by the Advisory Council for Human Rights of Morocco ([Conseil consultatif des droits de l'homme](#)) and national human rights NGOs.

NPM designation process

Existing monitoring mechanisms

Morocco's national human rights institution, the **Conseil Consultatif des Droits de l'Homme (CCDH)**, is an advisory body on human rights issues. In the frame of its broad mandate, it does visit prisons and monitors the treatment and conditions of prisoners. The CCDH was established in 1990 and started to visit prisons after its mandate has been strengthened and its structure reorganized in 2001.

On the basis of the findings after its visits to prisons, the CCDH published in 2004 a “Report on the situation in the prisons” that assesses the conditions and treatment in the light of [the law on the reorganization of prisons](#) of August 1999. In 2005 and 2006 the CCDH conducted around 10 visits of one to three days duration to different prisons in the country ([annual report 2005 – 2006](#), page 124ff in French version).

Moroccan prisons are also visited **by interdepartmental committees** established at the level of the provinces and prefectures by the governor. They monitor the conditions in prisons, in particular in relation to health, nutrition, living conditions, moral education and integration into society. They are mandated to submit observations and recommendations to the Minister of Justice. The commissions are presided by the governor or prefect and are composed of the head of the court of first instance, the *wakil al malik*, the judge supervising the execution of sentences, representatives of the local administration concerned with health, social and youth issues and professional training, the president of the local council and the local educational council and two members of civil society appointed by the Minister of Justice. Similar committees exist for monitoring places of detention for juveniles. Composition and mandate of these committees are laid down in the new criminal procedure code (3 October 2002, articles 620 – 621).

In addition, several Moroccan NGOs visit prisons, for different purposes, including monitoring. The promulgation of the law on the reorganization of prisons of 1999 opened the possibility for NGOs to visit prisons for the delivery of social services and for facilitating the reintegration of prisoners. Article 84 of this law specifies however that NGOs need a special authorization from the Ministry of Justice in order to visit the living quarters and meet with detainees. Since the promulgation of this law several specialized NGOs were created, such as the [Observatoire Marocain des Prison \(OMP\)](#) whose members regularly visit prisons and follow-up on individual complaints received, or the

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Unshaded boxes: States that have signed the OPCAT or are due to sign it in a near future

OPCAT Country Status – Middle East & North Africa

Morocco

Ratification: under consideration

Updated on 11 February 2009

	Association Relais-Société.
NPM options	The APT, jointly with the CCDH, organised a national seminar on the OPCAT in February 2009. During this seminar, working groups discussed the possibility of designating a new and specific institution, taking the example of the French General Inspector of Places of Deprivation of Liberty; or giving the mandate to the existing CCDH, taking the example of the process in Ghana. At the end of the seminar, the CCDH invited all interested stakeholders to submit their NPM proposals and committed to compile various options in order to communicate them to the Ministry of Justice. On the other hand, the civil society organisations also committed to present a proposal in the sense of creating a new and independent institution to assume the NPM mandate.
Legal framework	<i>No NPM establishment law has been adopted yet.</i>

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OPCAT Country Status – Middle East & North Africa

Saudi Arabia

Ratification: under consideration

Updated on 24 June 2009

Background information	<p>Population: 28 686 633 Area (sq km): 2,149,690 Prison population: 44 600 Number of establishments/institutions: 116</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>Saudi Arabia's report was examined by the Universal Periodic Review of the Human Rights Council in February 2009 Report of the Working Group</p> <p>Saudi Arabia's report was examined by the CAT in May 2002 CAT Concluding observations</p>
OPCAT ratification process and NPM designation process	<p>During the 4th session of the Universal Periodic Review of the Human Rights Council, Saudi Arabia accepted a recommendation to “<i>consider positively the Optional Protocol to CAT</i>” (recommendation no. 3 in A/HRC/11/23 and A/HRC/11/23/Add.1), among other international instruments.</p> <p>The Kingdom of Saudi Arabia specified that “<i>The implementation of this recommendation forms part of the Kingdom's ongoing policy of conducting a periodic review of all international human rights instruments with a view to considering accession there to through a comprehensive study of the provisions of those instruments by the Human Rights Commission in collaboration with all the governmental authorities concerned and the relevant civil society organizations and after ensuring that all the obligations provided for therein, including legislative requirements and control and implementation mechanisms, have been met.</i>”</p>
Legal framework	<p><i>No NPM establishment law has been adopted yet.</i></p>

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OPCAT Country Status – Middle East & North Africa

Tunisia

Ratification: under consideration

Updated on 24 June 2009

<p>Background information</p>	<p>Population: 10 486 339 Area (sq km): 163 610 Prison population: 26 000 Number of establishments/institutions: 36</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>Tunisia’s report was examined by the Universal Periodic Review of the Human Rights Council in April 2008 Report of the Working Group</p> <p>Tunisia’s report was examined by the Human Rights Committee in March 2008 HRC Concluding observations</p> <p>Tunisia’s report was examined by the CAT in November 1998 CAT Concluding observations</p> <p>The UN Special Rapporteur on Torture requested a visit to Tunisia in 1998. The Human Rights Committee noted in March 2008 “<i>the commitment by the delegation of the State party to invite various United Nations special rapporteurs, within the framework of their mandates, to undertake missions to Tunisia, including the Special Rapporteur on torture</i>”.</p>
<p>OPCAT ratification process and NPM designation process</p>	<p>Tunisia has committed itself to examine the possibility to ratify the OPCAT. In the framework of the Universal Periodic Review of the Human Rights Council, Tunisia supported in May 2008 the recommendation by Member States of the Human Rights Council to consider ratifying the OPCAT as soon as possible (recommendation 10 in A/HRC/8/21).</p>
<p>Legal framework</p>	<p><i>No NPM establishment law has been adopted yet.</i></p>

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OPCAT Country Status – Middle East & North Africa

Yemen

Ratification: under consideration

Updated on 25 May 2009

Background information	<p>Population: 22 052 656 Area (sq km): 555 000 Prison population: 5870 Number of prisons: 30</p> <p><u>Consideration by international and regional human rights mechanisms</u></p> <p>CAT will examine Yemen’s report in November 2009 Report to the CAT UPR of the Human Rights Council examined Yemen’s report in May 2009 Report of the Working Group Human Rights Committee considered Yemen’s report in 2005 HRC Concluding observations Special Rapporteur on Torture requested a visit to Yemen in 2005.</p>
OPCAT ratification process	<p>Yemen has supported the OPCAT when the instrument was considered at the UN General Assembly in 2002.</p> <p>During the consideration of Yemen in the Universal Periodic Review in May 2009, the Government of Yemen undertook to examine the recommendation concerning OPCAT ratification and report back in due time, before the 12th session of the Human Rights Council. The specific recommendations are the following:</p> <p><i>“Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Optional Protocol to the Convention against Torture (CAT-OP) and implement the national prevention mechanism foreseen in this instrument, (Argentina); accede to CAT-OP and establish its national preventive mechanism accordingly, which would also facilitate a better and more effective fight against secret detention, prolonged detention without trial and cases of torture by prison officers.(Czech Republic)” (A/HRC/WG.6/5/L.12)”</i></p>
NPM designation process	<p><u>Existing monitoring mechanisms</u></p> <p>Several organizations conduct visits and monitor conditions of detention in Yemen. However none of them is compliant with the OPCAT criteria in terms of independence and system-wide access.</p> <p>The Ministry of Human Rights (MOHR), established in 2003, organizes unannounced visits to inspect custodial conditions and the state of prisons in general to investigate any violations of the law. The Ministry reported for 2008 to have visited nine prisons in nine governorates and four detention centers in Sanaa and in March 2009 recommended improvements for prison and detention facility conditions to the cabinet. Each year, the MOHR submits recommendations to the authorities on improving prison conditions.</p> <p>Yemen also has a “Higher Committee to Investigate Prison Conditions and the Treatment of Prisoners”, established in 2000 and chaired by the President of the Supreme Court and the Deputy Director of the Office of the President. Its members include representatives of ministries and other relevant bodies. Its functions include investigating prison conditions and prisoners problems and propose solutions, in particular related to facilitate release.</p> <p>NGOs and parliamentarians have a certain degree of access to prisons under the Ministry of Interior. Access to places of detention under the Political Security Organization (PSO), a security apparatus reporting to the president, very limited.</p> <p>The Government of Yemen is considering establishing an Independent National Human Rights Commission in line with the Paris Principles. In its report to the Human Rights Council in May 09, it reported that a committee composed of representatives of the Ministry of Human Rights and the Office of the Prime Minister has been established to study the feasibility of establishing such an institution.</p>
Legal framework	<p><i>No NPM establishment law has been adopted yet.</i></p>

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Methodology

Information about NPM implementation comes primarily from field missions and in-country contacts of APT staff. Population and Area statistics are from the CIA World Fact Book. Prison population and number are approximations based on reports by the International Centre for Prison Studies. Prison population figures generally, but do not always, include pre-trial detainees. Background information is derived from a variety of sources.

The content of this NPM Status paper will be constantly changing; the latest version will always be available at www.apr.ch. APT invites you to provide additional information, updates, and comments. To give us information or ask questions about a particular country or region please contact Audrey Olivier, OPCAT coordinator (aolivier@apr.ch) or the following APT officers:

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