



APT Recommendations to the OSCE
Human Dimension Implementation Meeting:

Rule of Law II: Prevention of Torture

26 September 2012

**The Optional Protocol to the UN Convention against Torture
In the OSCE Region**

To date, 63 of the 192 member states of the United Nations have ratified the OPCAT (less than 30%), and only 42 of these have succeeded in the putting in place an NPM. Plainly, six years after the OPCAT's entry into force, the dual challenges of ratifying and implementing the instrument are not as uncomplicated as they may have seemed at the outset. Nevertheless, the OSCE region boasts a reasonable level of OPCAT ratification: more than half of all OPCAT States Parties (33 of the 63 globally) and the largest number of officially designated NPMs (26 out of 42 globally) are from the region.¹

The implementation of the OPCAT has assumed various forms in the region. The majority of countries have designated existing NHRIs as their NPM. Others, such as France, Germany and Switzerland, have established new institutions for this purpose and Kyrgyzstan is in the process of doing so. There also exist a growing number of examples of collaboration between civil society and NHRIs, often referred to as the so-called 'ombudsperson plus' NPM model (including Bulgaria, Denmark, Moldova, Serbia and Slovenia). Unsurprisingly, a number of countries do not fall neatly into any of these categories, particularly those which have designated multiple existing institutions as the NPM such as the Netherlands and United Kingdom with their respective six and 18-body NPM structures. A number of countries (Bosnia and Herzegovina, Germany, Hungary, Kazakhstan, Montenegro and Romania) have at some point postponed their NPM designation under Article 24 of the OPCAT.

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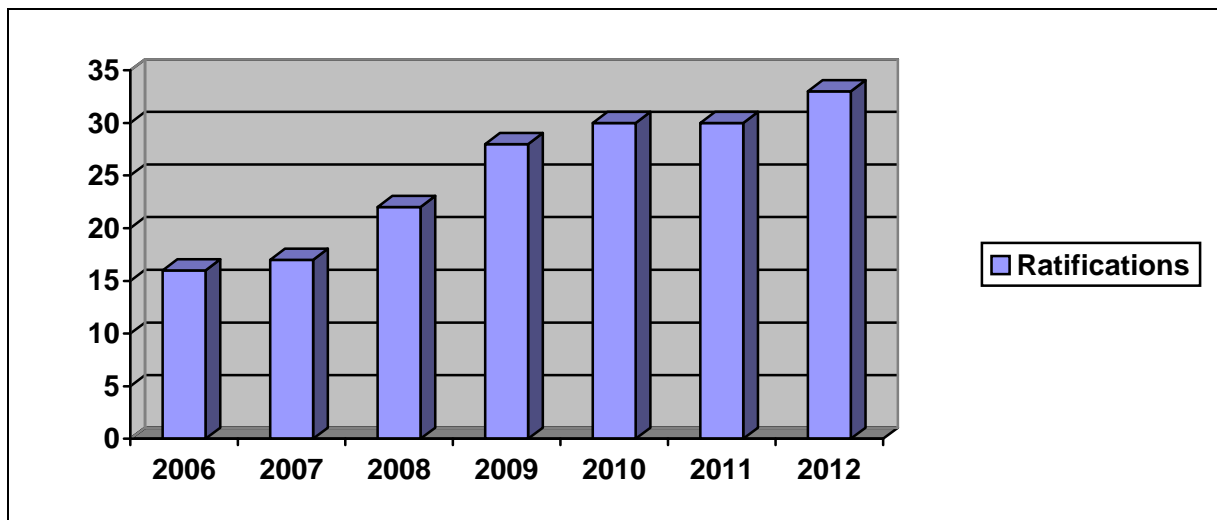
Of the 16 in-country visits² the SPT has conducted so far, three have been to OSCE participating States (to Sweden, Ukraine and Kyrgyzstan, which was taking place at the time of writing), and one report has been published (Sweden). This is relatively few given the number of States Parties in the region. According to the SPT, they have been less present in the region due to the monitoring conducted by other regional bodies, in particular the European Committee for the Prevention of Torture.

OPCAT Ratification and Implementation: Challenges in the OSCE Region

As this graph shows, progress regarding the OPCAT in Europe and Central Asia has been relatively encouraging, with States Parties doubling in the past six years:

¹ Thus, 33 of 56 OSCE participating States have currently ratified the OPCAT, while eight have signed the instrument.

² Not including SPT follow-up visits or SPT advisory visits.



Despite the progress, there exist noticeable gaps and challenges at the present time. For instance, just 33 out of 56 OSCE participating States have ratified the instrument at present, while, among the 27 OSCE participating States which are also European Union member countries, only 16 have ratified the OPCAT (despite the fact that the EU regularly urges countries outside the bloc to do so). At the level of OPCAT implementation, a paucity of human, financial and material resources remains a widespread concern for many NPMs, especially in the current economic climate. Other challenges found in practice include: weak founding legislation, in which key OPCAT provisions are missing; an inability of certain mechanisms to assume key NPM functions; a lack of professional diversity among staff; inadequate organizational clarity; and differing perceptions of independence, effectiveness and credibility.³

In addition, the quality of the domestic processes for determining NPMs has been varied: while there are examples of best practice, in some countries these processes have not been open, transparent and inclusive, as recommended by the SPT.⁴ Finally, a small number of States Parties have only succeeded in instituting an NPM several years after the one-year deadline to do so.

OPCAT Ratification and Implementation: Progress in the OSCE Region

Sight should not be lost of the fact, however, that a good amount of innovation and energy can be found in the OSCE region, providing examples of good practice for others. Certain countries, such as Kyrgyzstan for example, have had exemplary domestic processes of NPM determination. Several emerging monitoring bodies have used the fact of their designation as an NPM as a moment for introspection, re-orienting their activities and/or organizational

³ These and other NPM related issues were discussed at length during the APT's Global Forum on the OPCAT 'Preventing Torture, Upholding Dignity: From Pledges to Action', held in Geneva in November 2011. Interested persons should refer to the Outcome Report available on the APT website at: www.apr.ch

⁴ Please see *Guidelines on national preventive mechanisms*, UN Doc. CAT/OP/12/15, 9 December 2010 – Basic Principle 16.

structure to enhance their preventive work. Others have found innovative ways of improving the effectiveness of their work within the constraints of existing human, financial and materials resources.

In addition there is much regional experience that can be drawn on by actors inside the OSCE region which will facilitate the promotion and implementation of the OPCAT. An array of Europe and Central Asian actors will be present at this year's OSCE Human Dimension Implementation Meeting who have already been active in promoting the OPCAT and sharing their experiences in this regard with other interested actors in the OSCE region. The region's three main inter-governmental organizations, the OSCE, Council of Europe and European Union are cases in point. Certain OSCE participating States have also actively promoted the instrument in their dialogue with other countries and have funded activities aimed at supporting the ratification and implementation of the instrument in other countries.

Individual NPM representatives have clocked up thousands of miles by travelling to other countries in order to share their experiences with others and by participating in regional exchanges as well as the networks of NPMs which have emerged in recent years. Civil society has equally proven that it has a very important contribution to make in this connection. In short, there is a great deal of experience within the OSCE region on the OPCAT, which bodes well for the future.

APT recommendations

To make regular, independent monitoring of places of detention, as envisaged by the OPCAT, a reality in the OSCE region the APT recommends the following measures as a matter of priority:

- OSCE participating States should give serious consideration to the ratification of the OPCAT and, thereafter, ensure its effective implementation in practice. The APT believes that these steps will send a strong signal to the international community of the importance which each state attaches to combating torture;
- OSCE participating States are urged to initiate an open, transparent and inclusive dialogue on the implementation of the OPCAT at the national level, as recommended by the UN Subcommittee on Prevention.⁵ These discussions should involve a wide range of relevant national actors, including representatives of civil society and any actors already engaged in the monitoring of places of detention;
- OSCE participating States are encouraged to initiate a dialogue with other OSCE participating States, which have already signed or ratified the OPCAT, in order to facilitate an exchange of information and best practices on the institution and effective functioning of NPMs;
- Civil society actors in the OSCE region (often working in tandem with OSCE field missions) have also shown themselves to be skilled actors at making such international linkages and inviting NPM representatives from other countries to attend their national OPCAT events. The APT urges the continuation of such good practice;

⁵ *Ibid.*

- The many activities of OSCE field missions to promote the ratification and implementation of the OPCAT in an open, transparent and inclusive manner can only be applauded. Several such field missions have played very active roles in this respect in recent years, including in Armenia, Azerbaijan, Bosnia and Herzegovina, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Serbia, Tajikistan and Ukraine. The APT urges the OSCE field missions to continue their work in this respect, particularly when NPMs are in their formative stages of existence and may require external support;
- In recent years OSCE-ODIHR has also proven itself most capable as an institution to facilitate regional and sub-regional exchanges on the implementation of the OPCAT. The exchanges which took place in Prague in November 2008⁶ and Podgorica in April 2009⁷ are very good cases in point, during which an impressive range of actors were brought together from the countries of the former Soviet Union, Eastern and Central Europe and the Balkans. OSCE-ODIHR should explore the possibility of replicating such regional and sub-regional meetings;
- In addition, OSCE-ODIHR has potentially a very useful coordination role to play in supporting the many on-going efforts of OSCE field missions to promote the ratification and effective implementation of the OPCAT by providing them with information and advice relating to the instrument and by referring them to external sources of expertise on the issue;
- More generally, the APT very much welcomes the valuable exchanges of information and experiences on the OPCAT hosted by the OSCE. These include the working sessions on the subject held at past OSCE Human Dimension Implementation Meetings and Supplementary Human Dimension Meetings. Countries chairing the OSCE are strongly encouraged to keep the issue of torture prevention on the agenda of future OSCE meetings with a view to facilitating further exchanges of information and best practices on the OPCAT;
- The aforementioned attempts to counter practices of torture and ill-treatment must take place in a climate of genuine political will both on the part of OSCE participating States and the political structures of the OSCE. In this latter respect there exists a clear necessity for the OSCE Chairman-in-Office and the Permanent Council to attach much greater importance to the need to prevent torture in the region and address the issue on a regular, consistent basis. Without genuine political will at this level, overall progress will be difficult.

For further information about the issues raised in this submission please contact the APT's Europe and Central Asia Programme Officer, Matthew Pringle (mpringle@apt.ch).

⁶ *'OPCAT in the OSCE Region: What it means and how to make it work ?'*, Prague, Czech Republic, 25-26 November 2008, co-organized by OSCE-ODIHR and the School of Law of the University of Bristol.

⁷ *'Implementing OPCAT: Experiences from South Eastern Europe'*, Podgorica, Montenegro, 22-23 April 2009, co-organized by OSCE-ODIHR, OSCE Mission to Montenegro, Ombudsman's Office of Montenegro and the Institution for the Enforcement of Penal Sanctions.