**A brief input to the Independent Expert’s report to the Human Rights Council in 2022 on older persons deprived of their liberty: From the Subcommittee on Prevention of Torture**

First some words about the UN Subcommittee on Prevention of Torture, its mandate and functions, then some information on work done in relation to elderly persons deprived of liberty. A special attention is given the National Preventive Mechanisms (NPM) and the important role they have regarding this group.

**Introducing the SPT** [[1]](#footnote-1) **based on the OHCHR website:**

*The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) is a new kind of treaty body in the United Nations human rights system. It has a preventive mandate focused on an innovative, sustained and proactive approach to the prevention of torture and ill treatment. The SPT started its work in February 2007.*

*The SPT was established following the provisions of a treaty, the (OPCAT). The OPCAT was adopted in December 2002 by the General Assembly of the United Nations and entered into force in June 2006.*

*The SPT is composed of 25 independent and impartial from different backgrounds and various regions of the world. Members are elected by States parties to the OPCAT for a four-year mandate and can be re-elected once.*

*The SPT has two primary operational functions:*

1. *It may undertake visits to States parties, during the course of which it may visit any place where persons may be deprived of their liberty.*
2. *It has an advisory function which involves providing assistance and advice to States parties on the establishment of*[***National Preventive Mechanisms***](https://www.ohchr.org/en/treaty-bodies/spt/national-preventive-mechanisms)*(“NPM”), which OPCAT requires that they establish, and also providing advice and assistance to both the NPM and the State Party regarding the working of the NPM.*

**On the work of the Committee, OHCHR describes the following[[2]](#footnote-2):**

* *The SPT examines the way in which detainees are treated whilst in detention, as well as looking at the conditions of detention. SPT members talk in private with people in custody, without the presence of prison or other staff or of Governmental representatives.*
* *During its country visits, SPT members also talk with Government officials, custodial staff, lawyers, and doctors, and can recommend immediate changes intended to improve the situation of detainees. Their work is governed by strict confidentiality and they do not reveal who they have spoken to, or what they have been told. People who provide information to the SPT must not be subject to sanctions or reprisals for having provided information to the SPT.*
* *The SPT is guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity. The SPT conducts its work in a spirit of co-operation. It aims to engage with States parties through a process of constructive dialogue and* *collaboration rather than condemnation.*

**On the visiting mandate**

According to OPCAT the SPT visits places where persons are deprived of their liberty on a regular basis. OPCAT Art 4 defines this mandate and places of detention in the following way[[3]](#footnote-3):

#### **Article 4**

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

**SPT and older persons deprived of liberty**

In its work, the SPT pays special attention to groups that may be particularly vulnerable in places of deprivation of liberty and at risk of torture and/or ill-treatment. Elderly persons deprived of their liberty represent such a group whose rights need to be respected and monitored closely.

The SPT has nevertheless not developed any particular policy-document or guidance with regard to elderly persons deprived of liberty, but they are included in the regular visits and in our meetings with authorities and organizations. The situation of elderly people in detention is also referred to in our list of issues to be examined more closely, in particular from the point of view of health and well-being.

Even though the number of elderly persons in places of deprivation of liberty is growing, the number is still rather low. More focus and attention should be given to the special needs of the elderly in SPT work.

The SPT’s collaboration and contact with the NPMs represent important part of the work to protect the rights of elderly in detention. The NPMs visit places of detention in their countries on a regular basis and can follow up on recommendations and observations in a systematic way. For the SPT one of the main challenges is therefore to further raise the awareness of the NPMs on the situation of elderly deprived of liberty in order for the NPMs to strengthen their visits and methodology to suit the needs represented by this group.

The SPT meets elderly persons in the following places:

* Prisons
* Police stations
* Closed migration centres
* Psychiatric units
* Social centres
* Old age homes with limited options to leave the premises

The recommendations from SPT after visits with regard to elderly persons have mostly dealt with elderly in the prisons and in psychiatric units. Only a few visits have been undertaken to special homes for elderly. Older persons have been interviewed in migration centres, but no direct recommendations have been provided with special mention of elders in these places.

Some of the recommendations from the visits have addressed the NPMs and the need for them to strengthen their work and monitoring, regarding older persons deprived of liberty.

In the following some of the SPT recommendations with references to elderly in detention will be presented.

To Benin (2018)[[4]](#footnote-4) on the situation of the elderly as particular vulnerable groups: *Recommendation*: 78. The Subcommittee calls on the State party to reflect on the vulnerability of older persons in judicial proceedings and on ways of customizing the serving of sentences. It recommends that the State party review, as a matter of urgency, the individual situations of older persons deprived of their liberty in Benin.

To Mongolia (2018)[[5]](#footnote-5) on the importance of full access to water etc., and “that special arrangements, including diet food, must be made available for persons with disabilities, older persons and detainees who require special accommodation” (ibid). The issue of access to psychiatric health care was also referred to:

*64.The threshold for admitting detainees with mental health needs to a local hospital is extremely high, partly because of long waiting lists and delays in admissions for those outside the prison system…….The Subcommittee believes that the denial of qualified psychiatric assistance under such circumstances and in such conditions may amount to ill-treatment. It was also informed of the increasing numbers of the elderly within the prison population and notes that there is a need to increase the number and capacity of age-related health-care and treatment facilities, such as hospices and residential dementia care units within the prison estate.(New Zealand)*

A number of recommendations have been provided on the role of the National Preventive mechanisms on the situation of elderly. In Kyrgystan[[6]](#footnote-6) the NPM was reminded that also social care homes, hospitals and psychiatric institutions were places that may constitute places of deprivation of liberty.

Similar recommendations have been given to New Zealand[[7]](#footnote-7), Turkey[[8]](#footnote-8) and Malta[[9]](#footnote-9). A recommendation to Germany[[10]](#footnote-10) points out that places for elderly had not been visited:

*12. The SPT also welcomes the willingness of the NPM to voice criticism……..However, some institutions including the houses for elderly could not be visited due to insufficient resources and expert capacity currently available to the NPM. This should be addressed.*

21*. The SPT recommend s that whilst exercising its own visiting mandate, the NPM cooperate with the other existing mechanisms which monitor places of deprivation of liberty in order to seek possible synergies, including in the context of monitoring houses for the elderly. The SPT in particular recommends that the Joint Commission cooperate with the Municipal Supervisions of houses for the elderly as those institutions have not so far (with rare exceptions) been visited by the NPM due to a lack of adequate expertise.*

**Conclusion and reflections**

As is clear from the information provided above, the SPT has a lot of work to do to exercise regular visits to places where elderly persons are deprived of liberty and to formulate recommendations on this behalf. The work done to lift this issue higher on the agenda will hopefully be reflected both in the work of the SPT as well as the NPMs.

1. <https://www.ohchr.org/en/treaty-bodies/spt/introduction-committee> [↑](#footnote-ref-1)
2. <https://www.ohchr.org/en/treaty-bodies/spt/introduction-committee> [↑](#footnote-ref-2)
3. [Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment | OHCHR](https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-against-torture-and-other-cruel) [↑](#footnote-ref-3)
4. [CAT/OP/BEN/3 (SPT 2018 )](https://uhri.ohchr.org/en/document/4f5f2925-7602-430e-8b53-d01b5cd06b4d) [↑](#footnote-ref-4)
5. [CAT/OP/MNG/1 (SPT 2018 )](https://uhri.ohchr.org/en/document/b0fec171-0a9f-44af-9147-cf8a0407dce2) [↑](#footnote-ref-5)
6. [CAT/OP/KGZ/2 (SPT 2019 )](https://uhri.ohchr.org/en/document/922e4db7-f4a8-487f-8691-4c3a4ec531c3) [↑](#footnote-ref-6)
7. [CAT/OP/NZL/1 (SPT 2017 )](https://uhri.ohchr.org/en/document/d72e29f6-898e-47f3-8956-03b4eedecf31) [↑](#footnote-ref-7)
8. [CAT/OP/TUR/1 (SPT 2019 )](https://uhri.ohchr.org/en/document/abe06be7-69f2-4a5b-9225-5dfe99ce1525) [↑](#footnote-ref-8)
9. CAT/OP/MLT/1 (SPT 2016) [↑](#footnote-ref-9)
10. [CAT/OP/DEU/2 (SPT 2013 )](https://uhri.ohchr.org/en/document/de231ab9-d6a2-4da3-9480-bf134868eb20) [↑](#footnote-ref-10)