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Between international ideals and national practices

On the Autonomy, Effectiveness and Efficiency of National Preventive Mechanisms established under UN Law

N.R. Driegen

Utrecht University, School of Governance (USG)
Dr. A.J. Meijer
Dr. C.H.M. Geuijen

Inspectorate of Security and Justice (IVenJ)
Drs. F.B.A.M. Hofstee - van der Meulen

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Preface

Between international ideals and national practices; *on the autonomy, efficiency and effectiveness of National Preventive Mechanisms under UN law.*

This is the title of my research thesis with which I end 6 years of (study) experience on the field of governance and organisational sciences. My interest for the main theme of this thesis, differences between national implementations of international human rights agreement, has come forth from multiple personal experiences and interests. First of all from the experiences and knowledge I have gathered throughout my six years at the Utrecht School of Governance (USBO). Second of all because of experiences I received outside of the USBO, especially during my minor-courses Conflict Studies and my year abroad at Washington University in St. Louis, USA. With the finished product which lies now in front of you I hope I am able to not only start my career, but also contribute to a better, torture free, world.

I would like to use this preface to thank a number of people who helped me the last few months by giving advice, adjustments, feedback and support in many different ways.

First of all I want to thank Albert Meyer, my personal supervisor, who not only helped me by giving feedback to my drafts but also by getting me in contact with the Inspectorate of Security and Justice. I also want to thank Karin Geuijen, my co-supervisor, who with her feedback helped shape the final versions of this thesis. The same goes for Chris Palen and Gerco Liefhebber, my fellow students and 'colleagues' at the inspectorate.

Secondly I want to thank all my former colleagues at the Inspectorate of Security and Justice, location Kalvermarkt. They have not only given me new insights on my research thesis, but also showed me how important it is to be autonomous, effective, efficient, but most of all passionate in your way of working. Especially I want to thank Femke Hofstee for her professional support, not only in relation to this research thesis but also in indulging me in the wonderful world of monitoring places of detention. She has not only helped me with her continuous support but also by giving an example where drive, dedication and persistence can bring you.

Off course I want to thank all the respondents from all the different countries who cooperated with this thesis. Without their input this thesis would not have been possible. Especially I want to thank Malcolm Evans, head of the SPT and frontrunner in the implementation of the OPCAT agreement. He gave me the biggest complement possible for a researcher; 'you've completely nailed it. It is always hard to prove it with real facts although you do have a gut feeling. But when you are able to deliver these fact it helps people like me' (Evans, 31-5-2012).

I want to end by thanking all the friends and family which have supported me throughout all the years. I know that I have been very busy and absent in the last few months. Much appreciation for all your support and understanding for the fact that in the last couple of months I did not spend as much time with all of you as I would have liked. Especially I want to thank my parents who never fail to inspire and support me. I also like to thank Lonneke Ceelie who besides giving (un)wanted advice helped me with the final lay-out of this thesis. Lastly I would like to thank my roommate and good friend Lisa van Bijsterveld, without her support and practical help the thesis which is now in front of you would not have looked the same.

For now there remains nothing except wishing you all a pleasant read,

Utrecht, July 2012,

Niels Driegen

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1. Monitoring places of detention from an international perspective

'The international community has publicly and officially recognised torture and other cruel, inhuman or degrading treatment as among the most brutal and unacceptable assaults on human dignity' (APT, IIDH, 2010: 10). Therefore several international agreements were signed prohibiting torture. This has resulted in numerous national, regional and international instruments on the prevention of torture; making it absolute. Meaning that regardless of whether a state ratified any human rights instruments the prohibition of torture has become part of international customary law. Regrettably, despite the longstanding absolute prohibition of torture, no region in the world has managed to free itself from these appalling abuses. During the 1970's several international organisations combined forces in order to find additional, more pragmatic ways to help prevent such abuses; not only making up laws and implementing them on national level but enhancing the enforceability of legislation.

Research on international law and institutions is often done from either a background in law or human rights, meaning that the focus is on drafting new legislation and describing the perceived implications on international human rights and not so much on the actual implementation of those new laws. Within the field of public governance drafting policies is only one of the three central pillars in creating new law, implementation and monitoring being the other two. It is therefore that this research thesis focuses on a more governance based institutional approach; how can we put good international intensions into practice?

1.1 Introduction

In the beginning of 2011 Dutch politics and society was startled by the Brandon case; an 18 year old disabled boy who has been tied to the wall of his room for the last three years. The main reason for tying Brandon up in his institution for mentally handicapped seemed to be that the personnel was afraid for his unpredictable behaviour (EO, 2011). Headlines as; 'disabled Brandon chained to the wall for three years' (EO, 2011) and 'The Netherlands has about forty cases as Brandon' (NRC Handelsblad, 2011 (1)) led to an uproar in parliament and a couple of enquiries on the apparent degrading treatment of Brandon. From a policy perspective it was not prohibited to chain Brandon to the wall of his room and the authorities in place did not make wrong decisions according to the rules and laws in place (NRC Handelsblad, 2011 (2)). However, certainly now Brandon's behaviour has radically changed since he is unchained (AD, 2011), questions can be asked whether his detainment was justified from a human rights perspective. Perhaps when cases like this are viewed from a human rights perspective backed up by international law, other decisions regarding such cases are made in the future (Schippers, 29-5-2012).

An example as the Brandon case shows that mistreatment of people who are detained by the government happens all over the world. It is therefore that international agreements on human rights can help prevent cases of mistreatment. In November 2010 the Dutch government recognized the importance of international attention to human rights abuses by ratifying the United Nations' Optional Protocol to the Convention against torture (OPCAT). This treaty aims at the prevention of torture and other cruel, inhuman or degrading treatment or punishment. The focus is thereby on prevention of, not reaction on, human rights abuses. This is done by periodic visits (inspections) of places of detention by independent international and national organisations. Supervision is hereby important because 'people deprived of their liberty are out of sight, low priority and unpopular and therefore at particular risk of inhumane or degrading treatment' (Hardwick, 2011: 4). 'Monitoring the treatment and conditions of detention for persons deprived of their liberty through unannounced and regular visits is therefore one of the most effective means of preventing torture and ill-treatment' (APT, 2004: 13).

The decision of the state participants to ratify the OPCAT treaty has led to the creation of the UN International Subcommittee for the Prevention of Torture (SPT) and the appointment of National Preventive Mechanisms[1] (NPMs). The role of the SPT is hereby to visit places of detention and make recommendations to States Parties concerning the protection of detainees against torture

[1] For further information about the National Prevention Mechanisms see chapter 2.

and other ill-treatment. Because of the vast amount of countries which have already signed the OPCAT agreement (63 in July 2012) and the limited capacity of the SPT they cannot regularly visit place of detention across the whole word. Therefore 'each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism)' (UN, 2002). Thus, the NPMs take over this task from the SPT and visit places of detention in their own countries. The most important task of the SPT is therefore to maintain contact, assist and give advice to the NPMs (UN, 2002; Hardwick, 2011).

Each country which signed the OPCAT agreement is requested to designate the assignment of NPMs in their own way. Some states have identified existing bodies to take on the preventive NPM mandate; other states have created new bodies to take on this role. Not surprisingly, there are as many NPM models as there are States Parties, since each NPM reflects the traditions of its country. 'It is hoped that this diversity will ensure that each 'home-grown' body flourishes in its own setting, whilst holding true to the core principles enshrined in the OPCAT' (APT, IIDH, 2010: 1-2). In the Netherlands the government made the choice to do the implementation in a gradual and incremental approach by only appointing existing organisations as National Preventive Mechanism. This resulted in the appointing of multiple NPMs with one organisation coordinating them.[2] In other countries different choices are made with regard to the implementation of the OPCAT treaty (Brussaard, 7-02-2012: APT, 2012). The UN hopes that the diversity in implementation models for the NPMs leads to the best implementation of the OPCAT for each country, but does not know that for sure (APT, IIDH, 2010). The purposes of this research thesis are therefore mapping the implementation of the OPCAT treaty in different countries and giving an explanation for, and draw lessons from, the resulting differences. This research thesis might therefore also guide countries who are in the process of designating NPMs or planning on ratifying OPCAT in the future.

1.2 Research questions

According to the OPCAT agreement nation states should appoint National Preventive Mechanisms to monitor treatment of people in captivity and prevent prisoners from torture. The OPCAT agreement does, however, not make clear what a NPM should look like, nor does the agreement itself provide tools for further implementation of the treaty. States can either create a new body or nominate an existing body (or existing bodies) to fulfil the functions. They can also decide whether one or more bodies should be appointed. This flexibility has led to variety in the structure and composition of the NPMs so far designated under OPCAT (Hardwick, 2011: 8). The research objective is threefold on the one hand to explain the variation in national implementation of the OPCAT agreement between different (West-European) countries that signed the treaty, on the other hand to map the consequences of this variation on the autonomy, efficiency and effectiveness of the national NPMs, and to eventually draw lessons from this for the Dutch and international community. This objective results in the following research question:

Research question: What is the effect of the chosen implementation mode on the autonomy, effectiveness and efficiency of the National Preventive Mechanisms?

To answer this complex and broad research question it has been divided into eight sub questions. The first two sub questions are context-giving. In order to answer the main question it is necessary to explain OPCAT and the role of the National Preventive Mechanisms, this is done by giving an historical background to the development of the international law which in the end resulted in the adoption of the OPCAT treaty. The first question answers what the OPCAT agreement is about, which demands it makes regarding the (installation of) NPMs and what role the NPMs and SPT (Subcommittee on Prevention of Torture) has in monitoring places of detention. Additionally this question looks into which other international standards and laws are important in the design of NPMs. The second context question answers how the OPCAT fits in with the changing trends in

[2] For a clear explanation of the Dutch assignment of NPMs see chapter 5.

international oversights. The implementation of OPCAT does not stand alone, increasingly more intention is paid to (international) oversight, leading to an internationalisation of monitoring, a changing role of government and, especially in difficult economic times, increased need to prove why it is important to have monitoring bodies.

The next three sub questions look into the implementation of international law from a theoretical perspective. The first question looks at three different concepts from the organisational literature, autonomy, efficiency and effectiveness. Those three concepts, or parameters of organisational design, help explain why governments opt for a certain organisational form for their NPM and what the consequences are for the choices they make. The second question looks at the different implementation modes used by different countries and helps explain the differences between those models. The final theoretical question links the first two questions by answering what the relationship is between the chosen mode of implementation and the parameters determining the successful implementation of international law. This is done by drawing a new model with the hypothesis for the empirical results.

Following this the three empirical questions can be answered. The first question focuses on the national implementation of the OPCAT agreement. It looks at the way the OPCAT agreement is implemented in different European countries. The countries which are examined include: France, Germany, The Netherlands, Spain, Sweden and the United Kingdom.[3] From each country the national implementation mode has been described and the effects that this choice had on the autonomy, effectiveness and efficiency of the National Preventive Mechanism (NPM). The second question tries to find out what the similarities and differences between the implementation in each country. The eighth and final question analyses the factors why national implementation of the OPCAT agreement differs between countries. This is answered through an analysis of the different implementation modes. Why did countries opt for that specific model? And most importantly what are the affects of the chosen implementation mode on the successful implementation of OPCAT?

Sub questions:

Context:

1. What international law applies to the monitoring of places of detention?
2. What international trends in regulatory oversight are observable?

Theoretical:

3. Which parameters of organisational design are important in the (successful) implementation of national organisations under international law?
4. What different modes of implementation of national organisations under international law are discernible in the literature?
5. What is the relation between the modes of implementation and the parameters of organisational design in determining the successful implementation of a national organisation under international law?

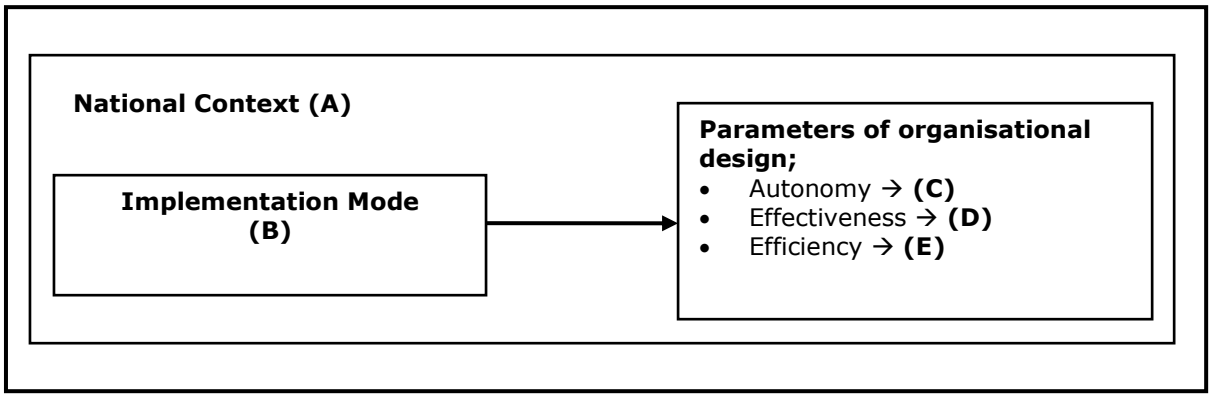
Empirical:

6. How has national implementation (in various countries) of the OPCAT agreement, regarding monitoring places of detention, taken place?
7. How does the difference between the different implementation modes affect the national implementation of OPCAT?
8. How do the parameters (autonomy, efficiency and effectiveness) affect the National Preventive Mechanisms?

[3] For further explanations regarding the choice of countries see chapter 4.

1.3 Research Model

The questions above are incorporated in the model below.



In the model above is National Context (A) the context factor. Two different views are important in explaining the context of OPCAT implementation, looking at it from an international perspective (chapter 2) and explaining the national context of each country researched (chapter 6). The national implementation mode (B) has been decided by the respective governments making it the dependent variable. The parameters of organisational design determining if OPCAT was successfully implemented are the independent variable. These parameters are divided between autonomy (C), effectiveness (D) and efficiency (E).

1.4 Social and scientific relevance

It is socially and politically relevant to identify the different ways the OPCAT treaty is implemented in different European countries. Giving an oversight of most of the European NPMs, the reasons behind the appointment of those organisations and most importantly the consequences of the different implemented models, can help draw lessons for the Dutch and International community. This research thesis can be especially helpful for the countries signing the OPCAT in the future and can give them a manual for the appointment of their own NPM. Furthermore, this research can be seen in a broader international discussion about monitoring places of detention by giving not only insight in the different organisational structures chose for monitoring detention and the consequences of those choices, but also opinions on the whole appointment process. This research thesis can help clarify certain ambiguities existing in the appointment of NPMs.

Finally, from a Dutch perspective, this research can provide tools for the interpretation of the role of the Inspectorate of Security and Justice (IV&J) as coordinator of the Dutch NPMs. Especially since this organisation has just been created. Making clear what the exact role of NPMs should be in international context can be important for the further implementation and delineation of tasks for the Inspection of Security and Justice (Brussaard, 7-02-2012).

The results of this research thesis are not only socially and politically relevant. A sharper insight in the implementation of the OPCAT treaty can also be relevant from a scientific perspective. In the organisational literature much attention is paid to the concepts of autonomy, efficiency and effectiveness but not so much on the combination of these three aspects. Thereby is OPCAT with its unique NPM structure a completely new organisational phenomenal which has not yet been researched from an organisational sciences background. Although OPCAT is the first international legislation which requires the instalment of national bodies, it is almost certainly not the last. Hopefully this research helps create a precedent.

From a broader scientific perspective the implementation of OPCAT might also be telling for the implementation of international law in other cases. Some research has already been done on the implementation of European law by independent national bodies; but in case of UN laws little research has been done yet because of the fairly unique law triangle created between Nation

States, SPT and NPMs.[4] Therefore this research can help set a precedent and give insights in gaps in the scientific research on this topic.

1.5 Reading Guide

The **first chapter** introduced the research topic, the research questions and indicated which aspects the research has focused on. To gain more insight in the international regulations that are relevant on the terrain of torture prevention, the **second chapter** will discuss the background and history on the creation of the OPCAT treaty and the international trends on (governmental) oversight that can be discerned.

The **third chapter** answers the theoretical sub questions by looking at the different implementation models discernible in international law and tries to determine the determining factors in the use of these models. In other words the chapter tries to answer which lessons on the differences of implementation of the OPCAT treaty can be found in the literature. In **chapter four** the methods of research are explained. In the **fifth chapter** the theoretical findings are operationalized to be able to measure them. The **sixth chapter** displays the results by making an international comparison between the researched countries. In the **seventh chapter** the empirical research questions are answered. This is followed by **chapter eight** with some conclusions and recommendations. The **appendices**, to conclude, are an overview of the interviewees (I), a list of the sources used (II), a list of all the abbreviations used (III), the questionnaire (IV) and the full UN OPCAT text (V).

[4] See chapter 2.1.1

2. International Context

Before interpreting the influence of the mode of implementation of OPCAT on the level of autonomy, effectiveness and efficiency of NPMs it is important to give some historical background on international law and the formation and realisation of the treaty and look into certain international trends in (governmental) oversight. This is done in order to make clear why different countries implemented different implementation models concerning OPCAT and most importantly to make clear what OPCAT is about.

This chapter will begin by giving an historical background to the international regulations regarding treatment of prisoners. After that the OPCAT, the NPM system and its effects, and other international developments are explained. The second part of this chapter pays attention to the international trends on regulatory oversight and with that information tries to explain the impact of the creation and implementation of the OPCAT agreement. At the end of this chapter the first two sub-questions concerning the context are answered; *which international law applies to the monitoring of detention and which international trends can be discerned concerning regulatory oversight.*

2.1 Regulatory oversight on the field of torture prevention

During the Second World War the greatest crimes against civilians were committed on behalf of the nation state. Before the war, protection of civilians was supposed to be the exclusive responsibility of a sovereign state. The horrible crimes committed during the war made clear once and for all that the individual needs to be protected against that state. After the Second World War the international legal system was therefore given the task (among others) to protect individuals (van Gerven-Mandjes, 2011: 7). One of the first and probably the most important international agreement signed was the Universal Declaration of Human Rights in 1948. This was meant as an answer to the atrocities humankind committed against individuals during the Second World War. The following pledge displays the depth and comprehensiveness of the declaration:

> **Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS** as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction' (UN, 1948).

The Universal Declaration of Human Rights consists of 30 articles of which specifically article 5 is important for this research thesis: 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment' (UN, 1948). It is this basic right that has been formulated in many specialised, national and universal treaties since (van Gerven-Mandjes, 2011: 7).

During the 70's renewed attention was paid to the prevention of torture due to the fact that many dictatorial states (mainly in South America and Eastern Europe) were violating this convention. Therefore the further development of the previously formulated article came back on the international agenda (van Gerven-Mandjes, 2011: 8). In 1984 this led to the adoption of the 'United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). The Convention Against Torture was adopted in 1984 by the UN to prevent torture in the world. Member States to this Convention are required to take effective measures to prevent torture within their borders and it forbids states to transport people to any country where there is reason to believe they will be tortured. The Convention against torture was signed by many states, but lacked a(n) (inter)national body to enforce it.

Whilst the idea of establishing an international visiting mechanism to be able to enforce CAT within the UN was postponed, the notion gathered momentum in Europe. At the time of the adoption of

the CAT in 1984 a discussion about the prevention of torture in the European Union led to the creation and adoption of the 'European Convention for the Prevention of Torture' (ECPT) in 1987. In contrast to the CAT the ECPT did involve an organisation with the power to effectively control the implementation of the treaty, namely the Commission for the Prevention of Torture (CPT). It was this organisation (CPT) that formed the basis for the idea of a UN body to control the implementation of the Convention Against Torture (CAT).

However this idea of having an international body to control the implementation of CAT was not met with much enthusiasm. The main reason why it took so long for the UN to draft this optional protocol was the fact that some countries were very opposed to the idea that an international organisation (the SPT) could do visits to national institutions. These countries felt that they were being threatened in their state sovereignty. As a deadlock breaker in 1999/2000 the Mexican proposal reached the tables, suggesting that national mechanisms should do this task instead. This eventually led to the creation of an implementation text with a mixed model containing national mechanisms as well as an international organ. To the surprise of the UN this idea got accepted but it was far from uncontroversial: 'in my view the UN didn't anticipate that this text should have ever been adopted in its current form. It was not the result of a long considered process in which they perfection was reached. It was a state of play in the process that sort of caught up in a train of events that led to its adoption. I know some who were intimately involved in the process that thought that the text, and I quote, was ready for a first class funeral' (Evans, 31-5-2012). Nonetheless the gap in oversight on UNCAT was sealed when in 2002 the Optional Protocol to the Convention Against Torture (OPCAT) was adopted by the UN.

2.1.1 OPCAT

'People deprived of their liberty are out of sight, low priority and unpopular and therefore at risk of inhuman or degrading particular treatment. In the UK and elsewhere there has been growing recognition of detainees' vulnerability and the need for robust, independent mechanisms to protect them from ill-treatment' (Hardwick, 2011). This insight (especially the last part), here expressed by the British Her Majesty's Chief Inspector of Prisons, has received formal recognition when the United Nations (UN) in 2002 signed the 'Optional Protocol to the UN Convention Against Torture' (OPCAT). On June 3, 2005, this treaty was subsequently ratified by the Netherlands (IST, 2012).

In 2002 the UN adopted the Optional Protocol (OPCAT) in order to establish a 'system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment' (OPCAT, 2002: article 1). The system of regular visits was set up because there is always a need for States to be vigilant in order to prevent ill-treatment and to find out whether or not ill-treatment occurs in practice. 'Preventive visiting looks at legal and system features and current practice, including conditions, in order to identify where the gaps in protection exist and which safeguard require strengthening' (SPT, 2008: par 12).

The central aim of the OPCAT treaty is to monitor the protection of detainees against torture and other cruel, inhuman or degrading treatment or punishment (UN, 2002). This manifests itself concretely in periodic visits to places of detention by independent international and national organisations. The focus is thereby on prevention (and not repression) of human rights abuses. To implement this protocol an international body, the Subcommittee for the Prevention of Torture (SPT) was created. This UN organisation consisted at creation of 10 members but when the 50th country in 2010 ratified the agreement the organisation was expanded by an additional 15 persons, setting the total at 25 SPT members. The mandate of the OPCAT agreement appoints three tasks to the SPT. First of all visiting places where people are, or could be, detained. Secondly supporting and advising the National Preventive Mechanisms (NPMs) and making recommendations to the States Parties with a view to strengthening the capacity and the mandate of the NPMs. And finally cooperation with the relevant United Nations organs and mechanisms as well with the international, regional and national institutions or organisations working towards the strengthening of the protection of all persons against torture (UN, 2002: article 11).

2.1.2 National Preventive Mechanisms

Because of the earlier mentioned deadlock breaker, the Mexican proposal to have national mechanisms doing most of the actual inspections, another problem was solved. Because a vast amount of organisations already signed the OPCAT agreement (63 in July 2012) and the limited capacity of the SPT they simply could not regularly visit place of detention across the whole word. Therefore the OPCAT agreement requires countries to appoint National bodies who, in name of the UN, take over this task. 'Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism)' (UN, 2002). The role of the SPT is hereby mainly to maintain contact, assist and give advice to the NPMs (UN, 2002; Hardwick, 2011; Evans, 31-5-2012).

The central premise of the OPCAT concerning the functioning of the NPMs seems to be that 1) places where people are being held prison are examined regularly and 2) that this happens independent of the organisations that lockup the prisoners (UN, 2002; Meeting NPMs, 2012). To make sure that this is done in the best way possible a unique law triangle was created between the subcommittee, the National Preventive Mechanisms and the Nation States (see diagram 1). The idea that a national agency controls the state treaty obligations is not unique, the fact that this happens under obligation of international law is. By continuing cooperation and dialogue between the three parties, the state is supported in taking the necessary measures to prevent torture and other degrading and inhuman treatment (APT, IIDH, 2010, 14; van Gerven-Mandjes, 2011: 13). In practice however the focus of the implementation will lie with the NPM because they are the organisation(s) actually carrying out the inspections.

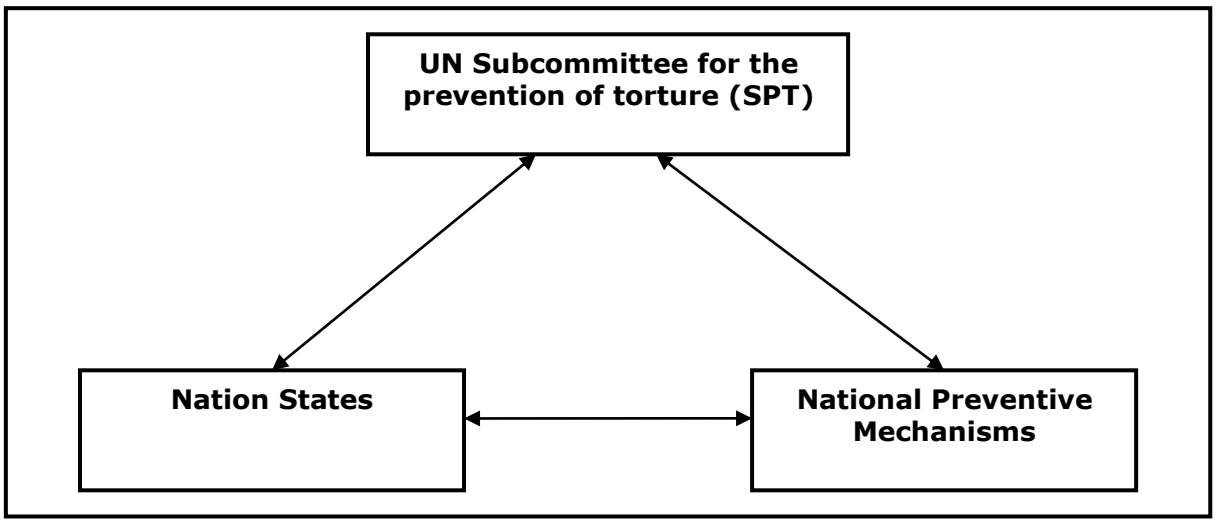


Diagram 1: International law triangle

The OPCAT does not indicate the form that the NPM must take, thereby providing the flexibility for States Parties to designate one or several bodies of their choosing, including new specialised bodies, existing human rights commissions, ombudsperson's offices & parliamentary commissions (Murray et al, 2011: 78-94). The reason behind this lies in the relatively unexpected acceptation of the OPCAT text when it was first drafted. 'Once the notion of creating a National Preventive Mechanism was introduced those that were involved in the drafting process suddenly realized that this could be a huge and contagious addition to the protocol' (Evans, 31-5-2012). The full implications of what this might look like and how it would work through in practice were only worked out after adoption. The idea would be to have an independent functional mechanism on national level with the same sort of function and competence as the international mechanism 'not a lot more than that' (Evans, 31-5-2012) … 'It was always envisioned that states would construct something new, but in reality very few had or if they have they created this as a catalyst to create NHRIs with the appropriate powers. But the diversity of the responses at the time was not thought through' (Evans, 31-5-2012). There was however a specific distinction in the OPCAT text about

establishing or designating, because it was understood that some countries already had such mechanisms. So the idea that some countries could appoint existing organisations instead of starting from scratch was in there, 'but frankly not much beyond' (Evans, 31-5-2012).

2.1.3 The tasks and powers of the National Preventive Mechanisms

The tasks and the powers the NPM should have were worked out in detail in the OPCAT agreement. Each national mechanisms irrespective of the form it takes, must comply with the minimum guarantees and powers set out in the OPCAT' (APT, IIDH, 2010: 25). Two articles of the OPCAT treaty describe the minimum requirements the NPMs should meet[5] (UN, 2002: article 18 & 19) Perhaps the most important of these are that NPMs should be independent, have a diverse composition and are granted the necessary powers. Meaning that the NPM must be adequately resourced to carry out its role and its personnel should have the necessary capabilities and expertise. The diverse composition means that NPMs should have a gender balance among the personnel and they should be representative of ethnic and minority groups (Murray et al, 2011: 78-94). This leads to the actual tasks of the NPM (OPCAT, 2002, article 19):

- to regularly examine the treatment of the persons in detention, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment
- make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty
- submit proposals and observations concerning existing or draft legislation.

To enable NPMs to exercise these powers, they should have (OPCAT, 2002; article 20):

- access to all information concerning the number of people deprived of their liberty, as well as the number of places of detention and their location
- access to all information referring to the treatment of those persons as well as their conditions of detention
- access to all places of detention and their installations and facilities
- the opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information
- the liberty to choose the places they want to visit and the persons they want to interview
- the right to have contacts with the SPT, to send it information and to meet with it.

[5] For a complete overview of the tasks assigned to the NPMs see appendix III

In diagram 2 the tasks of, and relations between, the SPT, Nation States and NPM are visualised.

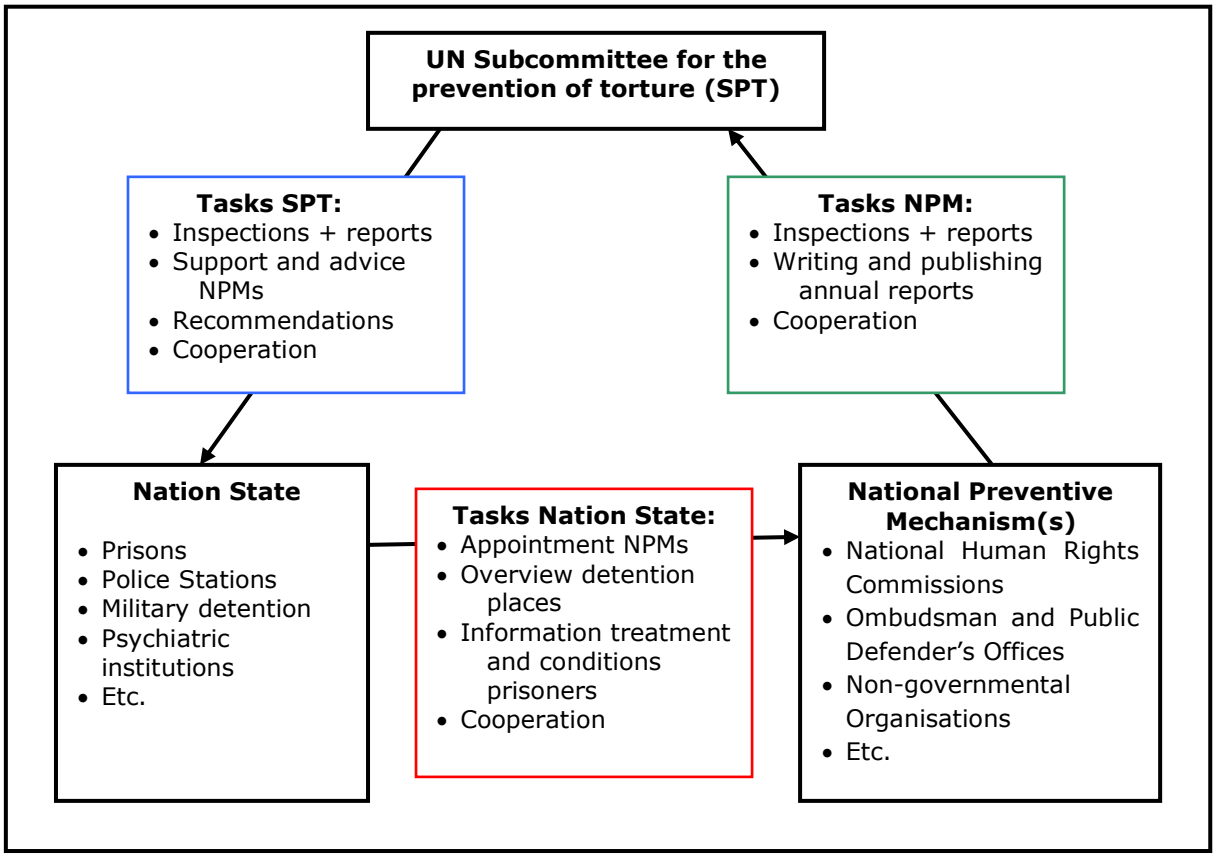


Diagram 2: Tasks of, and relations between SPT, Nation States and NPMs

2.1.4 Places of detention under OPCAT

The scope of OPCAT is deliberately broad, meaning that States Parties must allow the SPT and the NPM to carry out visits 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'' (OPCAT, 2002: article 4(1)). The scope of places to be visited is as wide as the definition of 'places of detention'. According to article 4 of the OPCAT: 'NPMs should visit all places where persons are deprived of their liberty, including traditional places of detention (e.g. police stations, prisons for sentenced or/and remand prisoners) and non-traditional places (e.g. international ports, detention facilities in military camps, social care homes, centres for migrants, psychiatric institutions, and means of transport)' (APT, IIDH, 2010: 239-240). This basically means all places where people are kept against their will by the government.

In practice it is nearly impossible (especially for the larger countries) to visit all those places of detention on a yearly basis. Therefore NPMs need to define a certain minimum frequency for visiting and make a programme to make sure each detention place is visited. As a key initial step, the definition of a programme of visits requires a thorough mapping or inventory of all places of detention in the country. Ideally, this inventory will have been produced during the designation phase by the respective governments and will so already be available to the NPM (APT, IIDH, 2010: 196-197, 240).

2.2 International trends in regulatory oversight

The discussion about OPCAT and the monitoring of treatment of prisoners should, from a public management perspective, be seen in a broader discussion about regulatory oversight. The world is rapidly changing and supervision needs to adapt accordingly. Writing and implementing laws without controlling them is usually pointless. Would individuals and organisations stick to the rules if they knew there weren't any consequences in breaking them? In other words, would citizens still follow the law if there was no control on speeding, food quality or the stability of the financial system? All of these examples emphasize the importance of enforcing and controlling regulation in our society. Countless organisations have therefore been appointed to guarantee that laws are not merely written pages but are effectively being implemented and enforced. To control on speeding, policemen were given the task of law enforcer, food and drug administrations the task to control our food and a combination of national and international financial services regulators to control and stabilize our financial system. These examples make clear that the field of regulatory oversight is not only very complex but also very diverse. There are however some trends in regulatory oversight which apply to most (if not all) organisations concerned with monitoring our daily lives.

2.2.1 International trends

In the field of regulation and supervision multiple trends are discernible, in this research thesis the focus is on the three most important developments. First of all (and arguably most importantly), a tendency towards internationalisation. Governance and policy making nowadays receives shape in an almost limitless world. Mainly due to technological developments, territorial and temporal boundaries have become less important and one might therefore speak of a deterritorialization of the world or 'a new world order' (Slaughter, 1997). This development has implications not only for media and culture, but for the complete organisation of welfare states which historically are mostly territorial in nature. A national vision is not sufficient anymore because business can be done at any moment, anywhere and with anyone. To safeguard international trade there has been an increasing demand for supranational law. For the Netherlands, Europe and the rest of the world this manifest itself in laws and regulations which have become increasingly more applicable internationally. Examples of areas where international agreements have been made include among others: air quality (Kyoto), transportation (Schengen) and combating international crime (international Court of Justice). More and more cases are not regulated by the nation states themselves but are governed by supranational law (Noordegraaf; 2004: 62). Regulation is hereby harmonized by supervisors, creating international networks, working together across borders and coordinating work with each other. 'The state is not disappearing, it is disaggregating into its separate, functionally distinct parts. These parts—courts, regulatory agencies, executives, and even legislatures—are networking with their counterparts abroad, creating a dense web of relations that constitutes a new, transgovernmental order. Today's international problems—terrorism, organized crime, environmental degradation, money laundering, bank failure, and securities fraud—created and sustain these relations' (Slaughter, 1997: 184). More international cooperation and knowledge exchange has led to the emergence of European and international regulators who not only hold second-line supervision on national supervisors, but also take over primary oversight responsibilities (Ministry of Housing, Spatial Planning and the Environment, 2010: 6).

There are however some forces trying to slow down the internationalisation trend. Individual countries benefit from a firm grip on their own surveillance apparatus. Flexible surveillance has an impact on the attractiveness of a country for business and the degree of competitiveness in comparison to the surrounding countries. However, this seems to be a rearguard reaction, one that can delay internationalisation but not stop it (Ministry of Housing, Spatial Planning and the Environment, 2010: 5-6).

Trend 1: Internationalisation of supervision leads to an increase in supranational inspection bodies, not only holding second-line supervision but also taking over primary oversight responsibilities.

A second noticeable trend is a movement towards more regulation and supervision and a changing role for the government. Although, worldwide talks about deregulations, more efficient supervision and a reduction of the administrative burden, reality shows that the demand for regulation and supervision is only increasing. The financial crisis, global warming and growing international crime makes clear that effective monitoring is essential. In a complex society, it may be difficult and undesirable to leave control to the consumer or society as a whole. The general public accepts increasingly fewer adversities or risks and it expects that this is being reduced by technological developments and/or governmental intervention (Ministry of Housing, Spatial Planning and the Environment, 2010: 6-7). In this context one could talk about an 'intervention trap', public organisations are required to do al lot, but achieve little; must act collectively, but are unable to do so (Noordegraaf, 2006). Therefore there remains a need for professional regulators, both in the public and private sector. However citizens do demand a higher level of involvement. Because of technological advancements it is easier for citizens to critically keep an eye on actions and procedures of companies as well as governments. With sixteen million inspectors in the Netherlands the government finds itself a lot of allies, but also competitors, with whom the work needs to be coordinated. This leads to a changing role of government, from an executive role to a coordinating role (Noordegraaf, 2004). In other words, the relationship between the government and citizens will change, and is already changing mainly due to a change in focus from vertical surveillance towards horizontal and civil surveillance. 'A change in the structure of organisations: from hierarchies to networks, from centralized compulsion to voluntary association. The engine of this transformation is the information technology revolution, a radically expanded communications capacity that empowers individuals and groups while diminishing traditional authority' (Slaughter, 1997: 184, based on Mathews, 1997).

This trend also faces opposing forces, such as the relentless discussions about administrative burdens, efficiency and target, as well as in some cases less citizen involvement. They do however not undercut the growing need for regulation and therefore the growth of the supervision apparatus as a whole (Ministry of Housing, Spatial Planning and the Environment, 2010: 6-7).

Trend 2: Government and regulation oversight will increase in size and importance the coming years. There is also a shift noticeable in citizen involvement. Civil surveillance becomes more important changing the role of the government from executor to coordinator.

The third and final trend is that the regulator itself is placed under supervision. Although regulation and supervision is a growing sector, monitoring remains being seen in a negative light and must therefore constantly demonstrate its right to exist for a couple of reasons. First of all, the media, the government and the individual citizens are very focused on incidents. Once an incident occurs, not only 'the perpetrator' but also the supervisor will be placed under a looking glass. Secondly the liability question comes in to play. Damage can not only be claimed from the perpetrator but in more and more cases also from the inspector when monitoring has proven insufficient. Therefore supervisors are forced to be more transparent and go more public with their findings. 'Under political and social pressure they will search for social and economical benefits to justify their existence' (Ministry of Housing, Spatial Planning and the Environment, 2010: 10). This can have a few positive consequences as well for the intern as the extern function of organisations. For the internal function it can promote effectiveness and efficiency by preventing the creation of 'red tape': dysfunctional procedures, consults, structures etcetera. In other words: what gets measured gets done. The external function is that it helps to make the organisation more accountable. It reduces complicated results in numbers which are easier to communicate (de Bruijn, 2006: 17-19). Especially in the case of inspections transparency and publishing results has proven to be an excellent instrument to force organisations to compliance (Ministry of Housing, Spatial Planning and the Environment, 2010: 9-10).

Trend 3: Political and social pressure puts the regulator itself under supervision. Therefore supervisors need to more open and transparent about their research results in order to justify their existence.

2.2.2 International trends and the OPCAT

All these trends, to a greater or lesser extent, can be found back in the decision process around the creation and implementation of the OPCAT agreement. The installation of the SPT is a clear example of the trend towards more internationalisation. This institution has the rights to visit places of detention in countries that ratified the agreement and is therefore an example of the overtaking of primary oversight responsibilities by an international body. The OPCAT also delivers a form of unification for the way places of detention are monitored. Every prisoner will be monitored in the light of the same international torture standards whether they are detained in the Netherlands, Spain or in Uruguay.

This leads to the second trend; an increase in government and regulation oversight and changing role for the government. By ratifying European and International laws the importance and size of regulation oversight will increase. In the past countries only had to stick to their own rules now they have to make sure they oblige to international standards as well. Another reason for the increase of importance of regulatory oversight may lie in an increase in transparency. Mainly due to technological advances (camera's and the internet) and pressure by NGOs abuses of people in detention are more likely to be noticed. This form of civil surveillance could provide a larger (inter)national call for better condition for, and monitoring of, prisoners[6] (Ramsbotham, 2003).

The third trend is also very visible in the creation of OPCAT. The OPCAT has a strong emphasize on transparency and urges countries to send in a yearly rapport which is publicly visible for everyone to read (APT, IIDH, 2010). Thereby OPCAT also urges governments to bring forward a list of all possible places where people could be detained. By doing so it not only makes the supervisor more open and transparent but the whole detention system in countries that ratified the agreement.

2.3 Looking forward

After this chapter, the balance on the international development which ultimately led to the ratification of OPCAT by 64 countries can be made. What did we learn from those developments and which lessons can be drawn from it? In this chapter two questions stood central; *what international law applies to the monitoring of places of detention? And what international trends in regulatory oversight are observable?*

To start off with the first question, especially in western European countries the creation of international policies, not only on the terrain of international regulation, has expanded enormously since the Second World War. This does not mean that the drafting of international policy is, and has been, a road without many pitfalls and detours. The drafting process and the eventual results of OPCAT show that it is not easy to make policies in a European context, let alone agree on the implementation at a global level. For OPCAT this means that there is a very loose description especially on how to implement the institutions asked for in OPCAT. Not only is it not prescribed what the NPM should look like, it is even encouraged for countries to take the organisational form it finds most fitting. Furthermore this chapter made clear that OPCAT is not the only international development on the prevention of torture. In European context work is done on their own inspection organ whilst also NGOs interfere with the treatment of prisoners.

The second question dealt with the trends that are visible in the international field of regulatory oversight. Internationalisation is one of the driving forces behind the creation of OPCAT. More and more problems cannot be solved on national level but require a global view. Making the field more complex and letting international law and institutions take over national supervision tasks. A second trend focuses on the increase of government and regulation oversight and the shift in government involvement. Due to technological advancements citizens not only gained more access to information about the treatment of prisoners, it is also easier for them to gather and create a form of civil surveillance. This has gradually led to more pressure on governments to increase their efforts to prevent torture and mistreatment of prisoners. But this has also changed the position of the government; from being the key player to being one of the actors in the field coordinating

[6] Examples of whistleblowers on the mistreatment of prisoners include; Ramsbotham (2003) on the British prison system; Leestmans & De Visscher (2009) on the Belgium prisons.

different (civilian based) organisations, such as NGOs, community based monitoring boards and national human rights commissions.

Looking forward to the rest of this research thesis this chapter evokes a few new questions; how have governments implemented the new OPCAT policies? What is the effect of the loose description of especially the organisation form of NPM on the implementation of OPCAT in the different countries? And how do governments cope with their new coordinating role in the prevention of torture and mistreatment of prisoners?

3. Theoretical Framework

To be able to map the implementation process of OPCAT in different European countries one could on the one hand look at the historical and political context as described in chapter 2. On the other hand one could explain the appointment process and consequences for the chosen implementation mode from a more theoretical perspective. Some key concepts and analytical frameworks are central in explaining why certain organisational arrangements were made and what consequences they have in order to explain the differences between nation states.

The first theoretical research question is the following: *Which parameters of organisational design are important in the (successful) implementation of national organisations under international law?* In this research thesis three different organisational parameters are discerned, namely: autonomy, effectiveness and efficiency. The choice of these three concepts stems from the requirements the OPCAT sets for the organisations appointed NPM. The NPM should be functional independent from the government (autonomy) and should have the necessary financial resources and enough powers to fulfil the tasks set in OPCAT (effectiveness). However national governments want to implement international law without dedicating to much political and financial capital. In other words they try to comply with the international treaty they signed for the least amount of money and effort (efficiency).

In the second part of the theoretical framework attention shifts to the second question: *What different modes of implementation of national organisations under international law are discernible in the literature?* Three different modes of implementation for the appointment of NPMs are introduced, namely the new specialised bodies, single existing bodies and the multiple bodies. Furthermore the (possible) consequences, advantages and disadvantages of each model is explained.

In the final part of this chapter the last theoretical research question is answered: *What is the relation between the modes of implementation and the factors determining the successful implementation of a national organisation under international law?* This is answered by presenting a new model in which the three organisational aspects are placed against the possible organisational modes the government can use in the NPM appointment process. This model will form the basis of the conceptualisation in chapter 5.

3.1 Autonomy

The concept of autonomy is frequently used in studies of public organisations. The popularity of the concept of autonomy stems from evolutions in the practice of public management in developed countries. These evolutions can to some extent be linked to theoretical schools which predict certain effects when organisations are put at arm's length from the government (Verhoest et al, 2004; 101). Out of those theoretical schools especially the New Public Management (NPM) movement places autonomisation of mostly executive tasks as one of its core elements (Noordegraaf, 2004; Bouckaert and Verhoest, 1999; van Thiel, 2000). This theory emphasizes the benefits of autonomy in the sense of specialisation and the consequent superior performance in organisations (economy, efficiency and effectiveness) (Verhoest et al, 2004: 102).

Due to the vast amount of research done on the topic of autonomisation it might not come as a surprise that there are also many different definitions of the concept of autonomisation or 'privatisation'. Künneke states that the definition of the process of giving autonomy to public bodies is; 'a change in the performance of governmental functions or in the tasks themselves through attribution or delegation of powers to a newly established or existing organisation, which has acquired some independent legal status and is owned by a public body, with the objective that in its actions a greater economic independence from other government agencies will be achieved' (Künneke, 1992: 13).

The process of autonomisation is however not the same as the concept of autonomy. The definition of autonomy used in this thesis stems from Christensen:

> 'bureaucratic autonomy is defined as the formal exemption of an agency head from full political supervision by the departmental minister' (Christensen, 1999).

In other words, autonomy means that the organisation is not under full political control from the ministry. The level of autonomy is thereby determined by the (political) distance between the organisation and the government. This does however not make the concept of autonomy measurable yet, because it does not make clear how to assess the distance between the organisation and the government. To be able to do that this research thesis uses the distinction made by Verhoest et al between two kinds of autonomy (Verhoest, et al, 2004):

- Autonomy as the level of decision making competencies of the organisation
- Autonomy as the exemption of constraints on the actual use of decision making competencies of the organisation.

3.1.1 Autonomy as the level of decision-making competencies

Autonomy is first of all about the extent to which the organisation can decide itself about matters it finds important. The level of organisational autonomy is therefore determined by the scope and the extent of the organisational decision-making competencies. Making an agency more autonomous involves shifting decision-making competencies from external actors (the government) to the organisation itself. This can be done by reducing the extent of regulation and *ex ante* approval requirements or other controls (Verhoest, et al, 2004: 104).

A division can be made here between managerial autonomy and policy autonomy. An organisation can have managerial autonomy with respect to financial management, human resource management (HRM) or the management of other production factors like logistics, organisation and housing. Contrasting managerial autonomy stands the level of policy autonomy of an organisation: the extent to which the agency itself can take decisions about the processes and procedures it conducts and the policy instruments it uses. Dependent on the level of detail of the policy decisions of its superiors, the implementing organisations has more or less policy autonomy (Verhoest, et al, 2004: 105).

It is possible to analytically measure the concepts of managerial and policy autonomy by looking at the decision-making processes by the organisation on the one hand and by the central government on the other hand, ranging from no involvement to high involvement (see first two dimensions of table 1).

3.1.2 Autonomy as the exemption of constraints on the actual use of decision making competencies

Even in the extreme case where the organisation has full decision-making competencies for management and policy the government could influence the actual decisions by other means. For example if the organisation depends on the government for all or a substantial part of its funding its actual decision-making power is severely constrained. Thus, the autonomy of a public agency also refers to the level of constraints the government puts on the organisation. Four kinds of such constraints on autonomy can be discerned (Verhoest, et al, 2004: 105).

First of all, structural autonomy: the extent to which the agency is shielded from influence by the government through lines of hierarchy and accountability. In other words are the head and other employees, of the organisation appointed by and accountable to the government or to a supervisory board? Secondly, financial autonomy refers to the extent that the organisation is dependent on governmental funding. Third, legal autonomy refers to the extent to which the legal status of the agency prevents the government from altering the allocation of decision-making competencies or makes such changes more difficult. In other words, does the organisation have a

legal personality established by the parliament which makes it harder for the government to circumvent the organisation? Fourth and finally the interventional autonomy, whether the organisation is free from *ex post* reporting requirements, evaluation and audit provisions from the government and to the extent that the agency is free from possible threats of government sanctions or intervention in the case of deviation (Verhoest, et al, 2004: 106).

3.1.3 Factors determining level of autonomy

The central premise of this research thesis on autonomy is taken from Verhoest et al: 'that in order to measure the level of autonomy of a public agency, one should not only look at the decision-making competencies on managerial and policy matters of the organisation but also to what extent the government can constrain the use of these competencies by structural, financial, legal and interventional means' (Verhoest, et al, 2004: 109). This led to the following table (table 1) discussing the different dimensions of autonomy and the indicators to find out the level of autonomy of the organisation. In chapter 5 these indicators are operationalized in order to use them for empirical research.

Dimensions	**Indicators**
Managerial autonomy	• Whether the organisation can take strategic managerial decisions concerning human resource management (HRM). (level of salary, conditions for promotion, evaluating and hiring) • Whether the organisation can take operational managerial decisions about HRM (who to appoint, promote and fire). • Whether the organisation can take strategic and operational decisions concerning financial management.
Policy autonomy	• To what extent the organisation can take decisions about the choice of target groups for its policy • To what extent the organisation can take decisions about the choice of policy instruments for its policy
Structural autonomy	• What is the composition of the organisation and what is the share of representatives of government on the total number of representatives.
Financial autonomy	• Where the organisation receives its income from (budget allocation, self raised, gifts, etc.)
Legal autonomy	• Whether the organisation has the legal personality • What type of legal personality it has.
Interventional autonomy	• Whether the organisation has influence on setting the goals and norms of the organisation • Whether the organisation has influence on the indicators used to measure output, effect, quality, outcome, etc. • Whether the performance of the organisation is measured • Whether the performance of the organisation is evaluated by the government • Whether the organisation is subject to sanctions and rewards in case of good or bad performance.

Table 1: Indicators to measure different dimensions of autonomy (Based on: Verhoest et al., 2004: 116).

3.2 Effectiveness

The concept of effectiveness is probably one of the most debated concepts in the study on public organisations. Despite some consensus there is still a significant lack of agreement on the definition and operationalization of this concept (Cameron, 1986; Henri, 2002).

There are however areas on which agreement is reached by researchers in the field of organisational effectiveness. First of all, most researchers agree that the construct of organisational effectiveness is central to the organisational sciences and can therefore not be ignored in theory and research. Secondly, no conceptualisation of an effective organisation is comprehensive. As the metaphor describing organisation changes, so does the definition or appropriate model of organisational effectiveness. Therefore consensus regarding the best, or sufficient, set of indicators of effectiveness is impossible to obtain. Criteria are based on the values and preferences of individuals and they can change over time, therefore no specifiable construct boundaries exist. This means that different models of effectiveness are useful for research in different circumstances (Cameron, 1986; 540-541). So as to a definition of effectiveness researchers agree on the importance of the concept and that not one conceptualisation is comprehensive.

One of the major problems in defining effectiveness lies in the key question: effectiveness for whom? The perspective determines whether an organisation can be labelled as effective or not (Provan & Kenis, 2007: 229; Quinn & Rohrbauch, 1983: 363; Connolly et al, 1980: 212). In other words from a financial stance an organisation might be effective when it delivers its goals without exceeding their means, from an internal perspective when all the employees are satisfied and from a consumers perspective when the goods and services provided are of good quality and costs. When looking at a successful implementation of OPCAT one also looks at this from different angles.

The government looks at the implementation of OPCAT in several ways, from a financial perspective; what the costs are for the implementation and whether public value is being created. Secondly, from an internal perspective; whether the NPM has enough means and powers to effectively carry out the tasks it has been appointed to. And lastly from a 'institutions' perspective, in this case the institutions visited by the NPM; whether the NPM fits in with the needs of the field and does not concur with other inspection bodies. It is therefore that the definition used on measuring organisational effectiveness comes from Connolly:

> 'not treating effectiveness as a single statement but as a set of several statements, each reflecting the evaluative criteria applied by the various constituencies involved to a greater or lesser degree with the focal organisation' (Connolly et al, 1980: 213).

Herman and Renz (1999) put it even stronger; 'Non-profit organisational effectiveness is multidimensional and will never be reducible to a single measure' (Herman & Renz, 1999: 110). It is therefore that in this research thesis in order to assess whether an organisation will be effective in adopting the requirements set under OPCAT this is done from a multiple perspective approach.

3.2.1 Multiple-constituency approach

The multiple-constituency model of organisational effectiveness states that various constituencies (stakeholders) define the criteria with which they evaluate a given organisation (Herman & Renz, 1999). One of the multiple-constituency models frequently used is called the Balanced Scorecard. The Balanced Scorecard was developed for the private sector to overcome deficiencies in the existing financial accounting models. These models failed to signal changes in the companies' economic value as an organisation makes investment in intangible assets, such as skills, motivation and capabilities of its employees, customer acquisition and retention, innovative products and services, and information technology (Kaplan & Norton, 1993; Kaplan & Norton, 2000; Kaplan, 2001). With the introduction of the Balanced Scorecard the performance of an organisation was measured from a multiple-constituency approach.

Although the scorecard was first mostly used in the private sector Kaplan argued that it could be used in the public sector as well (Kaplan, 2001). Kaplan states that also for nonprofits, such as

NGOs and governmental organisations, success should be measured by how effectively and efficiently they meet the needs of their constituencies (Kaplan, 2001: 353). In order to be able to assess whether an organisation meets those needs nonprofits should have a clear defined strategy; what is the goal they want to achieve? According to Kaplan strategy and performance measurement should focus on what output and outcomes the organisation intends to achieve, not what programs and initiatives are being implemented (Kaplan, 2001: 358).

As soon as clear goals have been set it is possible to view if those goals are achieved from the perspective of the different constituencies. Kaplan describes four different perspectives that are important when assessing success; the financial perspective, the customer perspective, the internal perspective and the learning and growth perspective (Kaplan, 2001: 355). The financial perspective being the most important as for most (if not all) private companies financial profitability is their ultimate goal.

The Balanced Scorecard has proven useful in the for-profit sector but there are some problems when using this approach in the non-profit sector (Moore, 2003). One of the main problems with the balanced scorecard is the focus on financial profitability. In the public sector the goals are social goals, not financial ones; their value is not primarily measured by the willingness of customers to buy goods. It is measured instead by non-financial measures consistent with their social mission. This does however not mean that financial measures are unimportant in the public sector but it means that the financial measures alone cannot tell whether they are creating the public value they intended to create. Moore uses an effective aphorism to explain the difference between for-profit and non-profit managers; 'for profit managers need non-financial measures to help them find the *means* to achieve the *end* of remaining profitable. Non-profit managers, on the other hand, need non-financial measures to tell them whether they have used their financial resources as effective means for creating publicly valuable results' (Moore, 2003: 7). Since OPCAT is carried out by non-profit organisations this research thesis uses the 'public value scorecard' by Mark Moore, in order to assess whether the NPM is effective in implementing the tasks set forth in OPCAT.

3.2.2 The public value scorecard

Moore describes three different dimensions that are important when assessing the effectiveness of a public organisation; the level in which public value is created, operational capacity is build and support and authorisation is expended (see table 2).

Some of the indicators Moore's model uses are associated with creating public value; 'the extent to which the organisation achieves its mission, the benefits it delivers to clients, and the social outcomes it achieves' (Moore, 2003: 21).

Other indicators used are associated with the operational capacity the non-profit organisation is relying on in order to achieve its results. 'This includes not only measures of organisational output, but also of organisational efficiency and fiscal integrity. It also includes measures of staff morale and capacity, and the quality of the working relationship with partner organisations. And, it includes the capacity of the organisation to learn and adapt and innovate over time' (Moore, 2003: 22).

The final dimension Moore uses is all about the degree of expanding support and authorisation of the organisation. In other words with the level of legitimacy and support the organisation enjoys. 'The extent to which "authorizers" and "contributors" beyond those who benefit from the organisation remain willing to license and support the enterprise' (Moore, 2003: 21). Moore finds this important because it indicates the capacity of the organisation to stay in operation overtime, especially since part of the capacity of the non-profit organisation lies in linking individuals to one another in an effort to realise shared goals (Moore, 2003: 22).

3.2.3 Factors determining level of effectiveness

The central definition on the measuring of effectiveness is taken from Moore; 'the best way to measure the value created by non-profit organisations is by developing measures of their success in achieving their mission. That usually requires non-financial rather than financial measures'

(Moore, 2003: 6). The indicators Moore uses in order to assess the level of effectiveness of an organisation are visualised in the table beneath (table 2). In chapter 5 these indicators are operationalized in order to use them for the empirical research concerning the implementation of OPCAT and the creation of NPMs.

Dimensions	**Indicators**
Creating Public Value	• What the organisational vision and mission is • What the strategic goals are • What the link is among the goals, activities, outputs and outcomes • What the possible range of outcomes is • What the activities and outputs are that create outcomes
Building Operational Capacity	• What the organisational outputs are • Whether the organisation is productive and efficient • Whether the organisation is financial integer • What the staff morale, capacity and development is • What the partner morale, capacity and development is • Whether the organisation pays attention to learning and innovation
Expanding Support and Authorisation	• What the funder relations and diversification is • What the volunteer roles and relations are • What the visibility and legitimacy with the general public is • How the relationship is with government regulators • What the reputation with the media is • How credible the organisation with civil society actors is

Table 2: Indicators to measure different dimensions of effectiveness (Based on: Moore, 2003: 23).

3.3 Efficiency

'The link between autonomy and effectiveness may appear blurred or unclear in seemingly similar cases. Agencies with similar decision-making competencies may have totally different financial or structural links with the governments, which may affect the extent to which these agencies can actually decide freely within these competencies' (Verhoest et al, 2004: 109).

This notion of Verhoest et al makes clear that there is another aspect besides autonomy and effectiveness which is important when assessing the successful implementation of a new organisation. This has to a large degree to do with what Meyer and Gupta (1994) are calling the political model of efficiency (Herman & Renz, 1999: 110). From a political stance an organisation can be judged effective when it gets the most out of a given input, or achieves an objective for the lowest costs (Stone, 2002: 61). But this is a simple definition and there are several factors complicating this definition.

The first complicating factor that arises is that efficiency in the public sector is a comparative idea, a way of judging the merits of different ways of doing things (Stone, 2002: 61). 'Economists argue that the achievement of (greater) efficiency from scarce resources should be a major criterion for priority setting' (Palmer & Torgerson, 1999: 1). Efficiency measures whether public resources are being used to get the best value for money. This is what makes efficiency a comparative idea (Stone, 2002: 61) and what makes measuring efficiency much harder in the public sector than in the private sector. In the private sector you are efficient when your output exceeds your input in comparison to comparable organisations. In the public sector the government represents society as a whole and therefore has multiple objectives to fulfil because of the many dimensions of the social welfare state (Prestiaeu; 2007: 3). In other words the government has to fulfil many different and sometimes conflicting objectives and needs to prioritize those objectives. 'Trying to measure

efficiency is like trying to pull oneself out of quicksand without a rope. There is no firm ground. Objectives for public policy are forged in political conflict and are constantly changing, not handed down on a stone table' (Stone, 2002: 65).

3.3.1 Factors determining level of efficiency

What is clear to Stone is that in order to be efficient the government needs to weigh different public interests. In case of implementing international law the government needs to answer the following question to assess whether an organisation is efficient; would establishing a new mechanism duplicate the work of existing mechanisms? If the existing body or bodies do not cover all places required by international law would it be easier and more efficient to fill the gaps or create a new body that has access to all places covered (Murray, et al, 2011; 79). This notion is very much an efficiency statement. Creating a new organisation takes time, costs money and might duplicate work. Whilst on the other hand when there are no fitting organisations available it might be more efficient to create a new organisation.

3.4 Modes of implementation

The second theoretical research question is: *What different modes of implementation of national organisations under international law are discernible in the literature?*

To answer this question explanation is needed for what is meant by modes of implementation. 'Implementation is the process of putting international commitments into practice: the passage of legislation, creation of institutions (both domestic and international) and enforcement of rules' (Raustiala & Slaughter; 2002: 539). Implementation is typically a critical step towards compliance; 'a state of conformity or identity between an actor's behaviour and a specified rule' (Raustiala & Slaughter: 2002; 539).

In this case compliance can be achieved by implementing the OPCAT agreement through the appointment of NPMs. As discussed in chapter 3.1, 3.2 and 3.3 there are three critical concepts to assess whether the implementation of international law was successful, namely the effectiveness, efficiency and autonomy of the national bodies appointed to execute it.

During the appointment process in the different countries those three factors surely played a major role in the implementation of OPCAT and in the NPM assignment. However in this research thesis the implementation mode has been set as a given and attention is not so much paid at why they chose to implement this model but the consequences of the chosen mode on the autonomy, effectiveness and efficiency of the NPM system.

Before giving an answer to the research question above it is crucial to point out that each of the countries which yet appointed their NPM chose one, or multiple, of the organisations listed below to fulfil the NPM function.[7]

- National Human Rights Commissions
- Ombudsman and Public Defender's Offices
- Non-governmental Organisations
- Independent External Inspectorate
- Judicial Offices
- Community-based Independent Visitors
- Independent internal Inspectorates

Murray et al (2011) recognize the first six organisations as possibly suitable to perform the tasks set under OPCAT. However the Independent internal Inspectorates are found to lack essential elements of an NPM under the OPCAT, and that it would be inappropriate to designate them as part of the NPM itself (Murray, et al, 2011: 80). Some countries, like the Netherlands and the UK, did appoint internal inspectorates as part of their NPM and that is why they are included in the list.

The focus of this thesis is however not on the differences between the organisations appointed NPM, but about the different implementation modes that the countries chose. It is important to state that an organisational model is not a mode of implementation but a static end result (the organisational form). It is the process which leads to the creation or appointment of an organisation; the way towards matching the organisational model with the international commitments. Therefore each mode of implementation can lead to the appointment of almost any of the seven (or a combination of the) named organisational models. In this chapter three different modes of implementation can be discerned: the creation of new specialised bodies, the appointment of single existing bodies and the appointment of multiple existing bodies.

[7] For a full list of all the different organisations appointed NPM see the website of the APT: http://www.apt.ch/index.php?option=com_k2&view=item&layout=item&id=767&Itemid=267&lang=en. For more information about all the different organisational forms see chapter 10: choice of organisation form by Murray, et al (2011).

3.4.1 New specialised bodies

Some State Parties decided to establish a new body specifically to carry out the NPM mandate. Such bodies will have a clear and focused preventive mandate and may therefore have more impact than existing institutions with broader mandates. Moreover new bodies may be more OPCAT-compliant in terms of mandates, independence, powers, and diversity of staff than existing bodies. However a new body is not without challenges. A new organisation may face difficulty in building public confidence as well in establishing legitimacy and credibility, and in being perceived independent. It may also be difficult for new NPMs to access all place of detention (APT, IIDH, 2010: 211-212).

This new specialised body can have different organisational forms. Some countries chose to establish a new National Human Rights Commission to give priority to the designation and establishment of NPMs (APT, IIDH, 2010: 216). This could specifically be a good idea if the country concerned needs a human rights organisation to also monitor other violations of human rights.

In countries which did not before had an established system for monitoring places of detention governments chose to create a National Human Rights Commission (examples are Mali and Mauritius). During the creation of OPCAT the SPT saw this form as their ideal because and NHRC could constitute an essential component in the implementation of international human rights at national level and not just the prevention of torture. As long as it properly created, fully independent and provided that the government and other organisations collaborate with them (Beco, 2007: 34; Evans, 31-05-2012).

However the two countries in this thesis which created a new specialised body researched in this thesis, Germany and France both opted to create a new independent eternal inspectorate, because their respective governments found no need to establish an NHRC and created an organisation specifically to carry out the tasks set under OPCAT.

3.4.2 Single existing bodies

Other States decided to give the NPM mandate to an already existing organisation. This could either be a national human rights commission (NHRC), an NGO, a Judicial Office or in most cases (and in the ones researched in this thesis) an Ombudsman.

The term ombudsman derives from a Swedish term which connotes a 'trusted person' whose role is 'to protect people against violation of rights, abuse of powers, error, negligence, unfair decisions and maladministration in order to improve public administration and make the government's actions more open and the government more accountable to members of the public' (Murray & Steinerte, 2009: 56). Traditionally, ombudsman institutions are therefore entities concerned with the oversight over the proper administration of justice and not human rights specifically, taking a rather legalistic approach (Murray & Steinerte, 2009: 54).

As with national human rights commissions, Ombudsman often already enjoy good guarantees of independence, particularly when their mandate is grounded in the country's constitution or long constitutional tradition (Murray, et al, 2011: 83). Institutions that are traditionally charged with a 'legalistic' mandate may find it difficult to take on the 'policy/technical' approach of OPCAT. Detainees and staff members of the detention places might also find it confusing to have an institution taking on completely different roles under OPCAT (Murray, et al, 2011: 84).

An advantage for appointing an existing organisation might be that they already enjoy significant public confidence and have experience in detention monitoring. Thus, some States consider this a politically expedient and relatively inexpensive way to avoid duplicating the work of existing institutions. There are also a few challenges when appointing existing organisation; in relation to the institution's mandate and methodology as well as its composition and resources. The existing organisation mandate is usually broader with a wide range of responsibilities. Many monitoring organisations are already granted powers to receive and investigate individual complaints of detainees. They do however, most of time, not have a full mandate to visit places of detention on a regular basis. Some organisations may have problems combining those mandates; it must therefore be made clear that the focus of the OPCAT is on the latter function (APT, IIDH, 2010: 212-217).

3.4.3 Multiple (existing) bodies

Under article 17 of the OPCAT (UN, 2002: article 17, appendix IV) it is permitted for Nation States to appoint multiple NPMs. The choice to appoint multiple bodies can be based on geography, basically in large or decentralized states, on jurisdiction mostly in federal states, on a thematically background (each NPM inspects the area of its expertise) or a combination of those three options. The main advantage in designating several institutions is that it secures better thematic and regional coverage of places of detention. However, this option is not without challenges. This option requires a good deal of coordination between the different NPMs also it must be made sure that there are no gaps in supervision. Besides that, all the bodies must meet the requirements of the OPCAT treaty regarding independence, resources, powers, guarantees and immunities (APT, IIDH, 2010: 219-220).

One of the advantages of appointing multiple bodies is that it is easier to include all organisations already assigned with a monitoring task. Organisations that have been appointed NPM under the multiple bodies implementation mode include (Murray, et al, 2011: 81-88; APT, 2012):

- National Human Rights Commissions
- Ombudsman and Public Defender's Offices
- Non-governmental Organisations
- Independent External Inspectorate
- Judicial Offices
- Community-based Independent Visitors
- Independent internal Inspectorates

To start with the last one the SPT has deemed it inappropriate to appoint internal administrative inspections units of the ministry or department responsible for the places of detention. However the countries researched in this thesis, the Netherlands and the UK, both chose national inspectorates to be appointed as NPM and in both cases a national inspectorate is also the coordinating NPM.

One of the advantages of the multiple bodies' model is that it is possible to also assign independent external inspectorates, independent internal inspectorates and community-based independent visitors as NPM. If the decision is made to only appoint one body as NPM it is a lot harder to appoint either a judicial office or community-based visitors, since their mandate is usually not broad enough, nor their expertise wide enough to fulfil all of the compliances under UPCAT. In combination with other organisations they can just continue fulfilling their task but now under the OPCAT mandate.

One of the barriers of appointing multiple organisations is that OPCAT requires that each of these sub-national NPMs must meet the OPCAT-requirements. This could be particularly of an issue if some places of detention are only visited by one of the NPM bodies. 'A state cannot say that though one body does not fulfil the independence requirements, another lacks the required expertise, and another does not have the right to visit all areas of the places it visits, that the cumulative effect is that each of the OPCAT requirements is met by one or another of the bodies taken as a collective' (Murray, et al, 2011: 90). In other words if a place of detention is visited by a body that does not meet the requirements one cannot point to the characteristics of bodies visiting other places to make up for that shortcoming (Murray, et al, 2011: 90).

Another barrier for the instalment of multiple NPMs is that 'at least one body must have a clear coordinating role and the means of generating system- or sector-wide analysis and recommendations, publishing an annual report, and liaising with the SPT' (APT, IIDH, 2010: 220). This has to be done because otherwise each NPM has to report individually regarding their NPM activities to their own government and the SPT. It is therefore not only practical but also logical to appoint one of the bodies as central contact.

3.5 Conclusion

In the theoretical framework three questions stood central; *which parameters of organisational design are important in the (successful) implementation of national organisations under international law? What different modes of implementation of national organisations under international law are discernible in the literature? What is the relation between the modes of implementation and the parameters of organisational design in determining the successful implementation of a national organisation under international law?*

In this paragraph the answers to each of these questions are summarized. The last question is answered by giving the hypothesis of this research thesis in the form of a model.

3.5.1 Autonomy, Effectiveness and Efficiency

In the paragraphs 3.1, 3,2 and 3.3 the following question was answered; *which parameters of organisational design are important in the (successful) implementation of national organisations under international law?*

Three different organisational factors are found in the literature which are important in the implementation of a national organisation under international law. Autonomy being the first, which is defined as the formal exemption of an agency head from full political supervision by the departmental minister. The level of autonomy is hereby determined by the decision making competencies of the organisation and the exemption of government constraints on the actual use of decision making competencies of the organisation. In order to measure the level of autonomy of an organisation six different dimensions can be discerned; managerial, policy, structural, financial, legal and interventional autonomy.

The second parameter is effectiveness, which means as much as how effective an organisation is in achieving the outcomes the organisation intends to produce. For non-profit organisations measuring the effectiveness is done best by conducting a multiple constituency approach, looking at the degree in which; public value is created, operational capacity is build and support and authorisation is expended.

Effectiveness and autonomy were found to not be the only factors important in the implementation of national organisation under international law. From an autonomy and effectiveness perspective it might be best to create a complete new organisation. However if a certain country already has (multiple) organisations conducting the work required under international law it might be more efficient to appoint the existing organisations although they might not completely fit the requirements set under the international law.

Autonomy and effectiveness could possibly in this case be a trade off. A complete autonomous organisation is preferable to for example independent internal inspectorates from an autonomy perspective. However these independent internal inspectorates might be able to do the inspection work OPCAT requires much more effectively than the completely autonomous organisation. Depending on the available resources in the country governments make their decision for their implementation mode also on the basis of cultural preferences, existing organisations and political will.

3.5.2 New or existing bodies

The answer to the second question is answered in paragraph 3.4; *what different modes of implementation of national organisations under international law are discernible in the literature?*

Three different models are used in practice for the implementation of a national body under international law, creating new specialized bodies, appointing singles existing bodies or appointing multiple existing bodies. Creating a new organisation to carry out the tasks under OPCAT is especially useful when there are no other bodies available to do the tasks set under OPCAT. New organisation will have a clear and focused preventive mandate and may therefore have more impact than existing institutions with broader mandates. Moreover new bodies may be more

OPCAT-compliant in terms of mandates, independence, powers, and diversity of staff than existing bodies.

The advantages of appointing an existing organisation might be that they already enjoy significant public confidence and have experience in detention monitoring. Thus, some States consider this a politically expedient and relatively inexpensive way to avoid duplicating the work of existing institutions. Most existing organisations however do not have a full mandate to visit places of detention on a preventive and regular basis.

The last implementation mode detected is the appointment of multiple organisations with one coordinating body. The main advantage of appointing multiple bodies is that it is easier to include all organisations already assigned with a monitoring task. But here lies the biggest barrier; each single NPM should meet the requirements set in OPCAT.

Specific advantages and disadvantages are associated with the design of a new body versus the designation of an existing body, and with the use of a single unified mechanism for the whole country or several mechanisms for different regions or types of institutions (Murray, et al, 2011; 78). It is important to repeat that this thesis does not judge on the chosen implementation mode. In some countries according to their respective national context it is much more logical to create a new organisation than appoint existing ones and vice versa. The most important conclusion from this question is therefore that in theory each mode could lead to an effective implementation of OPCAT but that each mode has different implications for the level of autonomy, effectiveness and efficiency of the National Preventive Mechanism.

3.5.3 Hypothesis

The final question, *what is the relation between the modes of implementation and the parameters of organisational design in determining the successful implementation of a national organisation under international law,* is answered through the formulation of a hypothesis.

In the theoretical framework this thesis looked at three different organisational concepts for the successful implementation of international legislation, autonomy, effectiveness and efficiency. The expectation for this research thesis is that an existing body (consisting of an ombudsman) will score relatively high on level of autonomy, low on effectiveness and medium on efficiency. High on autonomy because the organisation form of on ombudsman tend to have a history of independency from the government. Low on effectiveness because these are mostly organisations which are not used to do preventive inspections and have therefore no or little experience in inspecting places of detention. Medium on efficiency because there is presumably already an infrastructure capable of doing inspections in place, however in most cases the government does need to put in additional funds and/or add new powers in order for the ombudsman to carry the tasks under OPCAT.

For the countries that chose to appoint multiple existing bodies the opposite is expected. They will presumably score relatively well on effectiveness and efficiency because the organisations doing the actual inspection are probably already used to the task of inspecting, and the government does not have to pour in loads of additional resources before the organisations can begin their (new) tasks. The different organisations which are appointed NPM are thereby specialised on their respective terrains. In other words the tasks they are appointed to as NPM will in most cases not be new. With regards to autonomy they will probably score less well according to OPCAT standards because some of the organisations appointed are closely linked to the government and are in some cases used to get instructions by ministries.

The last mode of implementation, creating a new organisation, is on paper the most highly recommended by the SPT and the APT. Creating a new organisation can solve some of the problems when appointing existing organisations. New organisation can be placed autonomously from the government and with enough funding they can be very effective in inspecting places of detention. However there could also be some pitfalls, they have no experiences yet so they could be easily influenced by external factors damaging their autonomy or effectiveness. That's why in this research thesis the expectation is that the countries who opted to implement a new specialised body will score relatively well on both factors but not as well as the ombudsman on autonomy and the multiple body mode on effectiveness. With regard to efficiency creating a new organisation is

probably by far the most expensive mode of implementation, thereby leaving organisations already carrying out tasks that could fall under OPCAT in the dark.

To summarize the presumable effect the mode of implementation has on the autonomy, effectiveness and efficiency of the NPM the following table is drawn:

Modes of Implementation	**Autonomy**	**Effectiveness**	**Efficiency**
New specialised body	Medium	Medium	Low
Single existing body (ombudsman)	High	Low	Medium
Multiple existing bodies	Low	High	High

Table 3: expected level of autonomy and effectiveness of each mode of implementation

The conclusion of the table above is that there is expected to be a relation between the different modes of implementation and the autonomy, effectiveness and efficiency of the bodies appointed. The table shows that none of the implementation modes is expected to deliver a perfect monitoring system. Each mode of implementation has its own weaknesses. This model also suggests that there might be a trade-off between autonomy, effectiveness and efficiency. After the empirical research the results will show whether the hypothesis formulated above is correct.

4. Methodology

This chapter describes how the research is conducted and which methods and techniques are used. The theoretical framework forms the basis of this research thesis. Besides an extensive literature review a comparative study is done with other West-European countries that have implemented the OPCAT treaty. This chapter focuses on the reasons for conducting this comparative study and it will also explain the case selection. In addition, the reliability and validity of the research thesis will be explained. In Chapter 5, the core concepts of the theoretical framework are operationalized.

The purpose of this study is explaining the variation in national implementation of the OPCAT agreement between the different European countries that signed the treaty and to eventually draw lessons from this for the Dutch and international community. Another goal is to look at the relation between the choice for a certain implementation model on the autonomy and effectiveness of the organisation.

There is little research done on the appointment of national bodies demanded by international legislation. For this reason the research is primarily exploratory in nature. The explanatory component comes from the foreign experiences in implementing the OPCAT agreement and the effect of the chosen implementation mode on the autonomy, effectiveness and efficiency of the organisation. The ultimate goal of this research thesis is to make recommendations towards the Dutch government specifically the inspection of Security and Justice and other international governments planning on, (or already), implementing the new international law concerning prevention of torture.

4.1 Case selection

In this research thesis the choice was made to only look at countries with a comparable level of institutional development. OPCAT has been ratified all over the world. However implementation of OPCAT has varied wildly, since in a lot of the countries in Africa, South America but also Eastern-Europe there was not yet an institutional system of monitoring of detention in place. However it is worth noticing that countries outside of Western Europe, with less institutional bodies in place to monitor the detention of prisoners, still chose a wide variety in bodies as NPM. The majority of the countries who chose to appoint multiple existing bodies are however considered 'Western'. This can be explained because in many less institutional developed countries there were none or very few organisations already inspecting places of detention.

To be able to compare the different countries a division has been made on a basis of most different cases. This is done by making different groups based on a division between types following from the theoretical framework.[8] Underneath this division between different possible NPM options has been made:

New specialised bodies (A)

Some State Parties decided to establish a new body specifically to carry out the NPM mandate. Such bodies will have a clear and focused preventive mandate and may therefore have more impact than existing institutions with broader mandates. Moreover new bodies may be more OPCAT-compliant in terms of mandates, independence, powers, and diversity of staff than existing bodies. However a new body is not without challenges. A new organisation may face difficulty in building public confidence as well in establishing legitimacy and credibility, and in being perceived independent. It may also be difficult for new NPMs to access all places of detention (APT, IIDH, 2010; 211-212). About 25 % of all countries chose to appoint a completely new NPM. Examples of countries that chose to appoint new organisations include (APT, 2012):

France, Germany, Guatemala, Honduras, Nigeria, Paraguay, Senegal, Switzerland & Uruguay.

[8] This distinction was made by the *'Association for the Prevention of Torture'* (APT) and the *'Instituto Interamericano de Derechos Humanos'* (IIDH) and Murray et all (2011).[8] Also Prof. Malcolm Evans, head of the SPT, made this division in a speech on 29 September in Poland and during an interview on 31-5-2012. For more information on the different modes see chapter 3.5

Single existing bodies (B)

Other States decided to give the NPM mandate to an already existing organisation. This could either be a national human rights institution (NHRI), an NGO, a Judicial Office or in most cases an Ombudsman. In this research thesis the cases selected both appointed an ombudsman (and in Sweden also the Chancellor of Justice). There are a few clear advantages for appointing an existing body. They may, for example, already enjoy significant public confidence and have experience in detention monitoring. Thus, some States consider this a politically expedient and relatively inexpensive way to avoid duplicating the work of existing institutions. There are also a few challenges when appointing existing organisation; in relation to the institution's mandate and methodology as well as its composition and resources. The NHRI's mandate is usually broad with a wide range of responsibilities. Many NHRI's are granted powers to receive and investigate individual complaints of detainees. They do however, most of time, not have a full mandate to visit places of detention on a regular basis. Some NHRIs may have problems combining those mandates; it must therefore be made clear that the focus of the OPCAT is on the latter function (APT, IIDH, 2010: 212-217). Because this is such a broad grouping about 60% of the countries fall into this category, they include (APT, 2012, APT, 2010; 213):

Albania, Armenia, Azerbaijan, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Georgia, Japan, Luxembourg, Macedonia, the Maldives, Mali, Mauritius, Mexico, Moldova, Spain & Sweden.

Multiple (existing) bodies (C)

Under article 17 of the OPCAT (UN, 2002: article 17, appendix IV) it is permitted for Nation States to appoint multiple NPMs. The choice to appoint multiple bodies can be based on geography, basically in large or decentralized states, on jurisdiction mostly in federal states, on a thematically background (each NPM inspects the area of its expertise) or a combination of those three options. The main advantage in designating several institutions is that it secures better thematic and regional coverage of places of detention. However, this option is not without challenges. This option requires a good deal of coordination between the different NPMs also it must be made sure that there are not any gaps in supervision. Besides that all the bodies must meet the requirements of the OPCAT treaty regarding independence, resources, powers, guarantees and immunities (APT, IIDH, 2010: 219-220). 'At least one body must have a clear coordinating role and the means of generating system- or sector-wide analysis and recommendations, publishing an annual report, and liaising with the SPT' (APT, IIDH, 2010: 220). Countries who appointed multiple organisations (about 15%) include:

The United Kingdom, the Netherlands, Ireland (presumably) & New Zealand.

4.2 NPM Overview

The table underneath shows all the researched countries with the name of the organisations they appointed as NPM. In front of the country the number corresponds with the type of organisational form for the NPMs the country chose. Two countries were chosen out of each category. France and Germany together with Switzerland are the only European countries which chose to create a completely new organisation as NPM. Switzerland refused to cooperate with the research therefore France and Germany was chosen as respondents. There were more options concerning the second category, existing bodies. That's why I could choose two countries which are geographically, demographically and politically completely different; Spain and Sweden. The final category consists of countries that appointed multiple organisations as NPM. In Europe only the Netherlands and the United Kingdom have (yet) chosen for that implementation model.

NPM type	Country	Name of the organisation(s)
A	France	General Inspector of Places of Deprivation of Liberty
A	Germany	Federal Agency for the Prevention of Torture and Joint Commission of the Lander
C	Netherlands	Six organisations, including Inspectorate for the Implementation of Sanctions
B	Spain	Defensor del Pueblo (Ombudsman)
B	Sweden	Parliamentary Ombudsman and the Chancellor of Justice
C	United Kingdom	Eighteen organisations, including the HM Inspectorate for Prisons

A: New specialised bodies

B: Single existing body

C: Multiple (existing) bodies

4.3 Research Methods and Techniques

Document analysis and interviews are the main source of information for this research. There is a topic list on which the interviews (see Appendix I). The advantage of this research is that more detailed background information can be obtained (van Thiel, 2007).

The document analysis was made on the basis of written sources that were selected as study cases. These include annual reports, strategic reports and reports from meetings form the governments and organisations from the researched countries. Appendix II gives a summary of the analyzed documents.

The study population includes all persons in inspection organisations (NPMs) that deal with the implementation of the OPCAT treaty. Because of the limited size of the study, the research units were selected on the basis of a random sample from the study population (van Thiel, 2007). The respondents were chosen according to their function within the inspection of the countries; France, Germany, the Netherlands, Spain, Sweden and the United Kingdom. Furthermore, a number of informants and experts were interviewed based on their specific knowledge of the Dutch (and European) inspection were interviewed. These include officials of the Dutch government and professors specialized on this topic. Additionally a couple of groups meetings have been conducted in order to substantiate the results and to get everyone looking in the same direction. For a complete list of respondents, informants and experts see Appendix I.

This study made use of semi-structured interview as a research technique to gather more empirical data on the research topic. These semi-structured interviews were structured by using a topic list that is derived from the theoretical framework, see Appendix III.

4.4 Reliability and validity

"The reliability of a survey is determined by (1) accuracy and (2) consistency with which the variables are measured" (Van Thiel, 2007, 55). The accuracy relates in particular with the instruments used. Research should always give the same results when performed again under the same conditions. This repetitiveness can be achieved by interviewing multiple persons or in different situations in the same way (Van Thiel, 2007: 65). The central question is whether the observation is not a coincidence? Reliability involves the absence of random errors ('t Hart et al. 2005: 161-162).

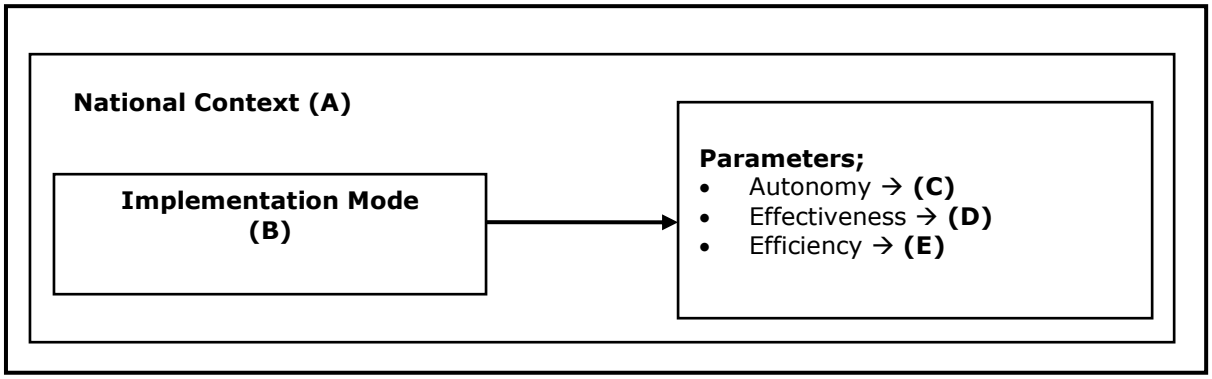
The validity has to do with the legitimacy (internal validity) and generalizability of the study. In general it may be assumed that validity postulates reliability. If a measurement is not reliable it is difficult to imagine that the instruments are measuring the correct concepts ('t Hart ea. 2005:

166). The generalizability of the research is about the extent the information can be translated into the 'real' world. In other words, are the acquired results only valid in the test setup or can you actually find these results in the 'real' world? ('t Hart, ea. 2005: 166-167).

To make sure that those conditions are met this study made use of multiple methods and techniques (interviews, observations and document analysis) in order to collect empirical data. By doing that triangulation is achieved leading to a greater degree of reliability ('t Hart ea. 2005: 286). Another way to achieve a greater deal of reliability is to compare the Dutch situation with many other cases. In this research this is done by looking at a minimum of two cases per NPM body. A possible problem for the degree of reliability is that some persons are interviewed through the telephone and or Skype. Conducting long-distance interviews can lead to misunderstandings. A further complication may arise in the cultural differences. Because of different backgrounds and standards interviews can be interpreted differently. This can be avoided by an adversarial process by sending documents to the interviewees.

5. Operationalization

In the first chapter the model below was introduced. This model followed from the research questions. To be able to measure the effect of the implementation mode on the autonomy, effectiveness and efficiency of the NPMs the different research factors are operationalized.



In the model above the National Context (A) is a context factor. This was explained in chapter 2: the International Context. The Implementation mode (B) has influences on the parameters of organisational design but has been determined by the national governments, making it a dependent variable. This makes the parameters of organisational design the independent variables, divided between autonomy (C), effectiveness (D) and efficiency (E).

5.1 National Context (A) and Implementation Mode (B)

At the end of the second chapter a few questions were raised concerning the OPCAT legislation and National Implementation that could not be answered through theoretical research. They included the following questions; how have governments implemented the new OPCAT policies? What is the effect of the loose description of especially the organisation form of NPM on the implementation of OPCAT in the different countries? And how do governments cope with their new coordinating role in the prevention of torture and mistreatment of prisoners?

The above questions and the context chapter were used as a basis for the dimensions and indicators below (see table 1).

Dimensions	**Indicators**
National Preventive Mechanism	• Which organisations where appointed NPM • What is the role and working methods for the NPM • Which places are inspected
Implementation mode	• Which implementation model was used for the appointment of NPM • Who led the appointment process and what was the timeframe • Whether there was any (political) debate about OPCAT and the appointment of NPM • Whether the organisations chosen to become NPM were involved in the appointment process • Whether there were other organisations in consideration of being appointed NPM • Whether there are organisations appointed NPM who do not

	meet the OPCAT requirements • Whether the implementation model fits in with the national context of the country • How is the NPM being coordinated

Table 1: Indicators to measure the National Context (A) and the Implementation Model (B)

5.2 Autonomy (C)

5.2.1 Autonomy according to OPCAT

To be able to translate the factors determining the level of autonomy as stated in table 1 it is necessary to look at the requirement OPCAT makes about functional independence for the NPMs.

In article 18 (1) of OPCAT, the UN demands that State Parties guarantee NPMs their functional independence. This essential safeguard determines the overall effectiveness of these bodies. In practice, functional independence means that NPMs must be capable of acting independently and without interference from state authorities; meaning the authorities responsible for prisons, police stations and other places of detention; the government; civil administration; and party politics. It is also crucial that NPMs be perceived as being independent from State authorities. Therefore, NPM members should be appointed following a public procedure, in consultation with relevant stakeholders (UN, 2002; APT, IIDH, 2010: 90).

The SPT recommends that an NPM be established by a constitutional or legislative text that describes its key elements, including the body's mandate and powers, its appointment process for staff and members, its terms of office, its funding and its lines of accountability. Furthermore, the law creating the NPM should not place the institution or its members under the institutional control of a government ministry/minister, cabinet, executive council, president or prime minister. The only authority with the power to alter the NPM's existence, mandate, or powers should be the legislature itself. Only the NPM should have power to appoint its staff. The independence of individual members is also crucial to ensure overall effectiveness. Each member or member of staff should be personally and institutionally independent from State authorities. Generally, NPMs should not include individuals who are presently occupying active positions in the government, the criminal justice system or law enforcement (APT, IIDH, 2010: 90).

5.2.2 Factors determining level of autonomy of NPMs

Following the requirements described in chapter 3 (table 1) the indicators are adjusted to contain the most important issues for NPM members. The level of autonomy of the different countries is determined by how well they score on each of the 6 dimensions of autonomy. To score a high level of autonomy the country has to score sufficient on each of the 6 dimensions of autonomy. For a country to score a medium level of autonomy it has to score sufficient on more than 4 different dimensions. When a country scores sufficient on less than 4 dimensions it is considered weak on the autonomy aspect of NPM-ship.

Dimensions	**Indicators**
Managerial autonomy	• Whether the NPM can take strategic and operational managerial decisions concerning human resource management (HRM) (who to appoint, promote and fire, level of salary, etcetera). • Whether the NPM can take strategic and operational decisions concerning financial management. Can the NPM itself decide where to spend its money on.
Policy autonomy	• To what extent the organisation can take decisions about the choice of which places of detention are visited • To what extent the organisation can take decisions about

	the choice of policy instruments used for inspections
Structural autonomy	• What the composition of the organisation is and whether the organisation is free to chose its members according to OPCAT rules
Financial autonomy	• Where the organisation receives its income from (budget allocation, self raised, gifts, etc.) • Whether the NPM is dependent on governmental funding
Legal autonomy	• Whether the organisation has the right legal personality and powers to fulfil its tasks under OPCAT • What type of legal personality the NPM has (does it fall directly under a ministry, etc.)
Interventional autonomy	• Whether the NPM has influence on setting the goals and norms of the organisation • Whether the organisation has influence on the indicators used to measure output, effect, quality, outcome, etc. • Whether the performance of the organisation is measured • Whether the performance of the organisation is evaluated by the government • Whether the organisation is subject to sanctions and rewards in case of good or bad performance.

Table 2: Indicators to measure different dimensions of NPM autonomy (based on: Verhoes et alt, 2004: 116).

5.3 Effectiveness (D)

5.3.1 Effectiveness according to OPCAT

To be able to effectively carry out the NPM tasks, OPCAT set out a couple of criteria. Perhaps the most important of these are that NPMs should be independent, have a diverse composition and are granted the necessary powers. In this research this has been combined to autonomy and effectiveness. Meaning that the NPM must be adequately resourced to carry out its role and its personnel should have the necessary capabilities and expertise. The diverse composition means that NPMs should have a gender balance among the personnel and they should be representative of ethnic and minority groups (Murray et al, 2011: 78-94).

All these criteria's should be met in order to sufficiently and effectively carry out the regularly visiting of places of detention. Generally speaking, the more frequent and regular the visits, the more effective the monitoring programme will be as a preventive tool (APT, IIDH, 2010: 93). To be able to fulfil its tasks at a minimum, OPCAT therefore requires that NPMs have the power to (OPCAT, article 19):

- regularly examine the treatment of the persons in detention, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty;
- submit proposals and observations concerning existing or draft legislation.

The general goal of an NPM can therefore be stated as: having the capacity and expertise to regularly carry out inspections on places of detention and make recommendations for improving the treatment of prisoners.

To enable NPMs to fulfil this goal, they should have (UN, 2002; APT, IIDH, 2010):

- the necessary resources for the functioning of the NPMs
- the necessary measures to ensure that the experts of the NPM have the required capabilities and professional knowledge
- personnel with the right gender balance and the adequate representation of ethnic and minority groups in the country
- access to all information concerning the number of people deprived of their liberty, as well as the number of places of detention and their location
- access to all information referring to the treatment of those persons as well as their conditions of detention
- access to all places of detention and their installations and facilities
- the opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information
- the liberty to choose the places they want to visit and the persons they want to interview
- the right to have contacts with the SPT, to send it information and to meet with it.

5.3.2 Factors determining level of effectiveness of NPMs

For governments to be able to measure if an organisation meets the needs listed above, a division is made on basis of the multiple-constituency approach. In this thesis three perspectives are set central to assess whether an organisation is allegeable to carry out the tasks. First of all the public value perspective, does the organisation have the (financial) means to carry out the tasks required as NPM? Secondly the operational capacity perspective, does the organisation have the right multidisciplinary range of expertise, employees, legal framework and powers, and does it fit in with the other tasks of the organisation? (see the first two perspectives of table 4).

And lastly the support and authorisation perspective, is the organisation known in the field and how is its role perceived by detainees, public officials and the general public. In other words do the working practices fit in with the 'needs' of the field?

This has led to the following table (table 3) discussing the three central perspectives and their indicators to find out the level of effectiveness of the organisation in carrying out the NPM tasks.

The level of effectiveness of the different countries is determined by how well they score on each of the 3 perspectives of effectiveness. To achieve a high score on effectiveness the country has to score sufficient on each of the 3 dimensions of effectiveness. For a country to score a medium level of effectiveness it has to score sufficient on more than 2 different dimensions. When a country scores sufficient on less than 2 dimensions it is considered weak on effectiveness.

Perspectives	**Indicators**
Creating Public Value/ Financial Perspective	• Whether the organisation has enough financial means to carry out the tasks set in OPCAT • Whether the organisation received additional funds when appointed NPM • Whether the mission and vision of the organisation fits in with the tasks of OPCAT • Whether the activities of the NPM leads to the goals of the NPM (prevention of torture)
Building Operational Capacity	• Whether the employees have the required capabilities and professional knowledge • Whether the employees have the right gender balance and are an adequate representation of ethnic and minority groups in the country

	• Whether the organisation has enough powers to carry out the tasks under OPCAT • Whether the tasks of OPCAT fit it with the other tasks of the organisation
Expanding Support and Authorisation	• Whether the organisation is known in the field • Whether the practices of the organisation fit in with the needs of the field • Whether there are other organisation already doing similar tasks (inspection workload) • What the relation is with the media • How the general public views the organisation

Table 3: Indicators to measure different dimensions of NPM effectiveness

5.4 Efficiency

5.4.1 Efficiency according to OPCAT

OPCAT itself does not make any statements on how to create an NPM system which is as efficiently possible. However the implementation framework for the NPM was kept deliberately vague; 'It is hoped that this diversity will ensure that each 'home-grown' body flourishes in its own setting, whilst holding true to the core principles enshrined in the OPCAT' (APT, IIDH, 2010: 1-2). This

In order for a country to make a just assessment of which implementation model to implement the government should have a complete list of all the places of detention that needs to be visited under OPCAT, a good insight in which places are already visited and where the white spots (places not being visited yet) are.

If the existing body or bodies do not cover all places of detention as defined in OPCAT would it be easier and more efficient to fill the gaps or create a new body that has access to all places covered by OPCAT (Murray, et al, 2011: 79). This notion is very much an efficiency statement. Creating a new organisation takes time, costs money and might duplicate work. But it might even take more of an effort to change existing organisations to do the preventive work under OPCAT. Therefore the government needs to answer the following question to assess which implementation mode would be the most efficient: would establishing a new mechanism duplicate the work of existing mechanisms?

Autonomy and effectiveness might therefore be a trade-off; establishing a complete new organisation which meet the precise autonomy and efficiency demands or appointing existing organisation without devoting too much public capital.

5.4.2 Factors determining level of efficiency of NPMs

In other to assess whether the requirements of OPCAT are met in the most efficient way the following table (table 3) discussing the three central perspectives and their indicators to find out the level of efficiency of the organisation in carrying out the NPM tasks.

Dimensions	**Indicators**
Efficiency	• Whether all the tasks required by OPCAT were already carried out in the country • Whether there were any white spots, places nobody inspected • Whether there was a complete overview of places of detention • What the range of places visited under NPM is

	• What the attainable frequency of visiting of those places is • Whether the right organisations were appointed NPM in order to fulfil the tasks under OPCAT • Whether there are any other none NPM members doing similar inspection tasks • Whether in the case of multiple bodies the NPM is efficiently coordinated • Whether it would have been more efficient when another implementation mode was adopted

6. International Comparison in Implementation OPCAT Treaty

6.1 Monitoring places of detention in the Netherlands[9]

I think we have organised our detention system quite good. The physical conditions are good, humane. I do think however that people are locked too long behind bars' ... In the past the situation in the Netherlands was an example to other countries, unfortunately we have long lost that position' (Hofstee-van der Meulen, 12-6-2012)

'The future will tell whether the organisation is sufficiently independent' ... 'there is currently no provision to secure both staff and budget for the implementation of sanctions domain' (Tummers, 29-5-2012).

6.1.1 Overview detention situation

Number of Prisons	90
Number of Police Cells	+- 1500
Approximate number of NPM units	+- 2000
Approximate time to complete full inspection cycle	+- 5-7 years
Dutch NPM	The Inspectorate of Security and Justice (IV&J), The Health Care Inspectorate (IGZ), The Inspectorate for Youth Care (IJZ) The Supervisory Commission on Repatriation (CITT), The Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ).
Additional participants	Commissions of oversight for penitentiary institutions, Commissions of oversight for the police cells, Commission of oversight for military detention, The National Ombudsman
Type of NPMs	Multiple bodies (Independent Internal Inspectorates, Community based Independent Visitors, Independent External Inspectorates, Judicial Offices and the ombudsman)
Budget for the NPM tasks	Around 15 full-time staff members (+- 2 million for the domain implementation of sanctions only)

[9] All results are based on interviews with Hofstee-van der Meulen, Tummers, Struyker Boudier, on meetings with the Dutch NPM members, and on documents published by the Dutch NPM.

6.1.2 Dutch National Preventive Mechanism

In the Netherlands the Custodial Institutions Agency (Dienst Justitiële Inrichtingen, DJI) on behalf of the Minister of Public Safety and Justice is responsible for the execution of sentences and custodial measures imposed after judgment of a court (DJI, 2012). With over one hundred branches throughout the country and some 17,000 employees, DJI is one of the largest organisations in the Netherlands. Annually DJI hosts for shorter or longer period some 70,000 "guests". This inclusion takes place in different types of establishments, examples include prisons (PI), juvenile detention centre (JJI) and forensic psychiatric centres (FPC). Not all organisations in the Netherlands that houses people in detention against their will are covered by the DJI, there are also people in confinement in police cells, court cells, military places of detention and even hospitals and retirement homes.

There are plenty of organisations responsible for overseeing the Dutch detention places named above. Examples of regulators include the Health Care Inspectorate (IGZ), the Public Order and Safety Inspectorate (IOOV) Inspectorate for Youth Care (IJZ), the Commission for Integral Monitoring Return (CITT), Commission of oversight for the police cells and the committees responsible for monitoring judicial devices. In addition, a large number of organisations with good indirect interest in preservation theorem, examples include, Food and Safety Authority (VWA), Inspectorate of Education (IvhO), VROM Inspectorate and the Inspectorate. Because so many organisations involved in the supervision of prisoners there was a coordination gap. This gap was filled with the establishment of the Inspectorate for the Implementation of Sanctions (IST) in early 2005 (IST, 2012). However not all of those organisations were appointed NPM, underneath a list is published with all organisation which were included in the Dutch National Preventive Mechanism.

The Dutch NPM is made up of the following bodies:

- The Inspectorate of Security and Justice (IV&J), consisting of the former Public Order and Safety Inspectorate (IOOV) and the former Inspectorate for the Implementation of Sanctions (ISt)
- The Health Care Inspectorate (IGZ)
- The Inspectorate for Youth Care (IJZ)
- The Supervisory Commission on Repatriation (CITT)
- The Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ)

The additional associates/participants/observers ('toehoorders') include:

- Commissions of oversight for penitentiary institutions
- Commissions of oversight for the police cells
- Commission of oversight for military detention
- National Ombudsman

Inspectorate for the Implementation of Sanctions (ISt) – Coordinating NPM

The Inspectorate for the Implementation of Sanctions is currently merging with the Public Order and Safety Inspectorate. However at the time of appointment (December 2011) the two organisations were still separate. The coordinating task was given by the Dutch government to the ISt that is why this organisation took the lead in the implementation of OPCAT.

The ISt is an organisation which supervises the implementation of sanctions with a view to a visible improvement of the effectiveness and quality of the implementation of sanctions. From an organisational perspective, the Inspectorate is part of the Ministry of Justice, its independence being guaranteed by the ISt regulations (Regeling ISt). The ISt advises the Ministry of Justice with respect to ensuring the appropriate implementation of sanctions. In this, the ISt is independent in its assessments, transparent in its methods and professional in its knowledge, skills and conduct (ISt, 2005).

The IST is a relatively small organisation that consists of twelve inspectors and a small support staff (Hofstee-van der Meulen, 12-6-2012). The field of activity of the Inspectorate for

Implementation of Sanctions comprises all establishments of the probation service and all national agencies and institutions falling under the Custodial Institutions Agency (DJI). The ISt scope of activities can thus be described in the following clusters: Probation service, Prison Service, Forensic Institutions, Correctional Institutions for Juvenile Offenders and special provisions (ISt, 2005).

The other Dutch NPM bodies

The Public Order and Safety Inspectorate is the organisation which was responsible for the inspection of police cells. After the merger with the ISt this task has also fallen under the new Inspectorate of Security and Justice (IV&J).

The other possible detention places fall under the mandate of one of the other NPM bodies. The closed wings of hospitals and the home for the elderly fall under the Health Care Inspectorate, juvenile detention and closed health centres fall under the jurisdiction of the Inspectorate for Youth Care, the Supervisory Commission on Repatriation (CITT) inspects the deportation of asylum seekers and lastly the Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ) looks at the prevention of torture from a judicial point of view.

Participants

The ISt suggested to the government that the different commissions of oversight and the ombudsman should also be able to deliver input in the NPM meeting (Hofstee-van der Meulen, 12-6-2012). However the government felt that the CvTs as well as the ombudsman did not meet the requirements set under OPCAT. That's why the government chose to implement them as additional participants and not as full NPM members (Brussaard, 7-2-2012).

In the table underneath are all the Dutch NPMs and the additional participants listed with their respective organisational model.

Dutch NPMs / **NPM type**	IV&J		IGZ	IJZ	CITT	RSJ	CvTs [10]	Ombud sman
	ISt	IOOV						
National Human Rights Commissions								
Ombudsman and Public Defender's Offices								**x**
Non-governmental Organisations								
Independent External Inspectorates					**x**			
Judicial Offices						**x**		
Community-based Independent Visitors							**x**	
Independent Internal Inspectorates	**x**	**x**	**x**	**x**				

Fig 1. Overview of all the Dutch NPM

[10] CvTs stands for commissions of oversight. All different community based visiting commissions are included, prisons, police and military detention.

6.1.3 Implementation mode

The Netherlands signed the OPCAT in May 2005 but did not ratify it until October 2010. In December 2011 the Netherlands designated its NPMs by appointing multiple organisations. In parliament the minister acknowledged that the ratification process could have been faster, given that we did not require the implementation of legislation, and should have been faster, given the importance of the treaty. Unfortunately, due to a lack of capacity and priority, the ratification process was stalled. According to the minister the Netherlands already had a good functioning national inspection system in place and taken important steps in the prevention of torture in the European context (Struyker Boudier, 21-6-2012).

According to OPCAT member States have to assign their NPM within a year after ratification of the treaty. Regrettably the appointment process exceeded the prescribed time between ratification of OPCAT and assignment of the Dutch NPM. A number of complexities may have prolonged the NPM designation process. Firstly, a number of existing bodies already carried out roles which were similar to that of the NPM. While an initial decision was made that the functions of the NPM in the Netherlands would be performed by the collective action of existing bodies, the government still had to consider which existing bodies were OPCAT-compliant and which should be designated. Secondly, despite the pre-existing bodies, there remained gaps in coverage of places of detention. For example, while inspection of prisons was well established, inspection of military detention, police and court custody, at that time, was limited. Thirdly, the Dutch government had to think about whether and how to coordinate the activities of the multiple bodies being considered for designation. Finally the Dutch government decided that, to avoid gaps in coverage of detention places, all organisations with an official task regarding monitoring detention should have a place at the table. Not all of those organisations complied with all of the OPCAT requirements. That is why the decision was made that besides appointing NPMs some additional organisations were to be selected as associate/participant/observer ('toehoorder'). Those associates are formally appointed by the government and are allowed to join the NPM meetings and deliver input, but do not have any formal NPM tasks (Struyker Boudier, 21-6-2012; Arnout Brussaard, 7-02-2012).

During 2010 and 2011, the government consulted with relevant bodies about the composition of the Dutch NPM and the extent to which existing bodies complied with OPCAT. It firstly selected the Inspectorate for the Implementation of Sanctions (ISt) as coordinator, because of its experience in visiting prisons. To make sure the appointment process went as transparent and independent as possible the government allowed the ISt to further recommend which organisations to appoint as NPM (Hofstee-van der Meulen, 12-6-2012). In deciding which bodies should be designated, the ISt applied the following criteria:[11]

- the statutory basis upon which the bodies operate gives them unrestricted access to places of detention and to detainees, including the power to make unannounced visits, and unrestricted access to information about detainees and their conditions of detention (or at least contains nothing to prevent such access and such visits)
- bodies should possess the independence, capability and professional knowledge to carry out visits.

In a written letter to the SPT via the Ministry of Foreign Affairs on 22nd of December 2011, the Ministry of Security and Justice formally designated 6 bodies which would make up the Dutch NPM and assigned 4 additional members as associate/participant. The Ministry of Security and Justice also mentioned that additional inspection bodies may be added to the NPM in future (Brussaard, 7-02-2012).

After assigning the NPM bodies the ISt and the IOOV merged into the Inspection of Security and Justice giving the coordinating task to the IV&J.

Coordination

Before the official designation process was finished the government chose the ISt (now IV&J) to carry out the coordinating and communication functions of the NPM. The purpose of coordination is

[11] OPCAT, Article 18-23, Struyker Boudier, 21-6-2012; Brussaard, 7-02-2012).

to promote cohesion among the NPM members, facilitate a collective understanding of OPCAT ant its requirements, and to encourage collaboration and sharing learning among a wide-ranging and large group of organisations. At the same time, however, the independence of individual members is respected, as is their ability to set their own priorities for detention monitoring. Through working with all of the NPM members, the coordinator is able to gain an overview of all the monitoring activities and possible gaps in regulatory oversight. However the NPM tasks themselves and the reporting on their activities are done by the organisations themselves (Hofstee-van der Meulen, 12-6-2012).

Additionally the IVenJ fulfils the communicating function with other (inter)national bodies. This is done by acquiring information about monitoring activities from all the NPMs and associates. Secondly by combining that information and publishing the annual report of the Dutch National Preventive Mechanisms (Hofstee-van der Meulen, 12-6-2012).

In April 2010 the coordination activities by the ISt started when a meeting was organised for the different bodies to find out if they were interested and able to become a NPM or become involved as observer. Once all bodies had indicated by formal consent in writing to do so and were appointed the ISt organised a second meeting in February 2011. The aim of this meeting was to discuss working methods and the annual report. In order to create awareness about OPCAT, SPT and NPMs among Dutch NPMs the IV&J has organised an international conference in June 2012 on the synergy between the SPT, CPT and NPMs (Hofstee-van der Meulen, 12-6-2012).

Conclusion

As with other newly assigned NPMs, the Netherlands faces several challenges in the implementation of OPCAT. Many of the challenges during the NPM implementation process related to its structure – notably its size and complexity (independence). The Netherlands are not unique in designating multiple NPMs but is one of the few countries (including the UK) with so many organisations. At the moment 6 organisations are appointed NPM and an additional 4 as associates/participants/observers. The IVenJ is appointed as coordinating body.

6.1.4. Autonomy

Managerial autonomy

Most of the Dutch NPM inspections are executed by 3 'independent internal inspectorates' meaning they are closely linked to their respective ministries. Therefore they are also subjected to the Dutch carousel system (ABD) which means all top managers are appointed by the ministry. All the inspectors however are appointed by the head of their respective organisations.

With regard to financial management, there is not a specific budget allocated to the NPM tasks. The former domain 'Implementation of Sanctions' is now relocated within a new organisation giving them less budgetary powers than they use to have. For all the other NPMs there has not been given additional resources to fulfil its new role as NPM.

Policy autonomy

The Dutch NPM has so far had full autonomy in deciding which places to visit and which policy instruments to use for those visits. However '98% of all visits are done announced' (Hofstee-van der Meulen, 2012).

Structural autonomy

The Dutch NPM is free to choose its employees for the specific task according to OPCAT rules and it does not have to take employees firstly from ministries (except for the managers). The IVenJ has appointed a diverse team with for example lawyers, a psychologist, a former head of a prison and an organisation expert. The other NPMs also use inspectors with a relevant background.

Financial autonomy

The Dutch NPM is completely dependent on public funding. The government also decides the level of funding and set some financial restraints on the independent internal inspection bodies. For some expenses (for example international travel) the ministry needs to give approval. 'We used to be very financially independent we need to see how this works out in the future' (after the merging) (Hofstee-van der Meulen, 12-6-2012).

Legal autonomy

Three of the six NPM are considered an Independent Internal Inspectorate body, meaning that they are closely linked to their respective ministries. The Internal inspectorates (IV&J, IGZ & IJZ) do therefore not seem to have the right legal framework to carry out the tasks under OPCAT since they are not completely autonomous from the government. But there are some reflections on that. At the time of the appointment the former ISt had a regulation which guaranteed their independence from the government. This regulation has not yet been transferred to the new organisation, but has been brought to the attention of the head of the Inspectorate of Security and Justice (Hofstee-van der Meulen, 12-6-2012).

They do not have their own legal personality but fall directly under the responsibility of the government. This does not stroke with the requirements of OPCAT stating that it is crucial that the NPM is perceived as independent from the government. However all respondents indicate that there is little reason to believe the ministries will misuse their influence on the inspection bodies. 'I think functionally we are (independent), however if you look what's on paper it's insufficient' (Hofstee-van der Meulen, 12-6-2012).

Interventional autonomy

The Dutch NPM has a high degree of autonomy in setting the goals and norms of the organisation. There is some external control whether those goals are met, mainly considering some financial rules which are controlled by the audit department of the ministries. The organisation is not subjected to government interventions it does not receive sanctions and rewards in case of good or bad performance.

Conclusion

According to the requirements under OPCAT the Dutch NPM does not conform to the right standards concerning autonomy. The main problem is that 3 out of the 6 NPMs are internal inspectorates, meaning they have very close links to their respective ministries. Consequential there are no fixed budget for the NPM tasks and the management functions within the inspectorate are appointed through the ministry. Practically the inspection work is not (yet) being negatively influenced by the weak autonomous position the NPM is in. However because of the insufficient level of managerial, financial and legal autonomy the Dutch NPM level of autonomy is assessed as low.

6.1.5 Effectiveness

Creating Public Value

Since the Dutch government chose to appoint existing organisations no additional funds were allocated when implementing OPCAT. With a yearly budget of over 2 million euro's for the inspections, in the area of implementation of sanctions only, the NPM seems to be relatively well equipped from a financial point of view. According to the respondents; 'enough money is available to effectively carry out the tasks under OPCAT' (Hofstee-van der Meulen, 12-6-2012; Tummers, 29-5-2012). However some white spots were uncovered during the implementation process, which means additional funding might be necessary in the future. Furthermore no money has been reserved for the coordinating tasks; this will probably at the least costs the NPM organisations some man-hours. From a public value perspective the Dutch NPM seems to deliver, most of the

places of detention (with the exception of police cells) are being expected within 5-7 years and thereby fit the recommendations of the APT and the SPT, but more importantly guarantee a reliable monitoring system in the Netherlands.

Building Operational Capacity

The Dutch NPM has chosen their members according to OPCAT rules. The employees seem to have the required capabilities and professional knowledge and are of a sufficiently diverse background to carry out its tasks as NPM. There is a gender balance in the team, however the organisations do not represent an adequate representation of ethnic and minority groups in the country.

The Dutch NPM seems to have the right powers required to do the inspection tasks. All the NPMs have the right to visit places of detention unannounced, but rarely use this option. The Dutch inspectorates of prisons (IVenJ) is not allowed to look into medical files, however one of the other NPMs (the Inspectorate of Healthcare) also visits the same locations and is allowed to look into the medical records.

The Dutch NPM was given the OPCAT task as an addition to their regular responsibilities. This means that for all the organisations the NPM tasks are just one of the tasks at hand. In some cases the NPM tasks do not fit in very well with their other responsibilities. For example the former IOOV was not used to do preventive visits to places where people are detained.

Expanding Support and Authorisation

From an expanding support perspective most organisations which form the Dutch NPM are well known in the field, and their presence is most of the time much appreciated. Not only do most inspectorates already exist for a couple of years, the different areas of expertise are clearly delineated.

The Dutch NPM focuses on building confidence with the organisation or establishment at place. The full report with recommendations, the response of the organisation and the response of the ministry at charge is published all together on the website.

There are many inspection organisations visiting the same institutions in the Netherlands. But those organisations are mainly other NPM. For example juvenile detention centres are inspected by the IVenJ, the IJZ, the Labour Inspection, the Food and Goods authority, the Independent monitoring boards etc. Especially in the past institutions complained of an inspection overload. Due to a new computer system it is easier to coordinate all the different inspecting bodies.

Conclusion

From an effectiveness perspective the Dutch NPM manages to create public value, build operational capacity and expand its support and authorisation. Almost all of the tasks under OPCAT are effectively carried out. There are a few areas which may need some additional attention; the SPT and APT recommend doing a substantial part of the inspections unannounced, this is not (yet) the case in the Netherlands. Also there has yet been less attention paid to the inspection of police and court cells, but plans are made to increase the professional monitoring of those places. Since the Dutch NPM system scores sufficiently on each of the three effectiveness dimensions it is assessed as highly effective.

6.1.6 Efficiency

Overall the whole field is being inspected regularly and frequently enough. There are however some areas that need more attention. The former IOOV was responsible for doing the bureaucratic inspection of police cells (besides the independent monitoring boards). The IOOV never actually did any inspections in that area and the same goes for detention places at court. After the implementation of OPCAT more attention is paid to the white spots detected. In the near future the lack of inspection in those areas will probably be covered.

From a governmental perspective the choice to not appoint a new organisation stemmed from an efficiency point of view. The government found that they already had the right organisations to

fulfil the OPCAT requirements. From an effectiveness point of view this choice seems the right one. However the Dutch NPM consists of many different organisations with different backgrounds (see table 1), such as professional internal inspectorates but also independent civil monitoring boards. In order to create a more efficient National Preventive Mechanism putting more effort in coordination could be key.

Conclusion

From an efficiency standpoint the choice to appoint existing organisations proved the right one. Very little additional resources or powers needed to be allocated to fulfil the commitments under OPCAT. However the Dutch NPM members are not used to work together, have different work methods, legal backgrounds and powers and expertise. In order to create an efficient work mechanism the Dutch government should put more effort in coordination. Therefore the level of efficiency is rated as medium.

6.1.7 Conclusion Netherlands

The Dutch NPM is one of the two researched countries which opted to implement the multiple bodies model. As is shown in figure 1 the NPM consists of a wide variety of different organisations.

As with other newly assigned NPMs, the Netherlands faces several challenges in fulfilling its functions. Many of the challenges by the Dutch NPM relate to its structure – notably its size and complexity (independence). The Netherlands are not unique in designating multiple NPMs but is one of the few countries (including the UK) with so many organisations. At the moment 6 organisations are appointed NPM and an additional 4 as associates/participants/observers. Some of those organisations may have a different understanding of the OPCAT and how best implemented. There might also be some discussion about why some of the organisations are appointed NPM and others 'only' as associate/participant. However the majority of the inspection task lies with the new Inspection of Security and Safety since that compromises all of the prisons, forensic care institution as well as police cells. That said there are some specific autonomy problems with this organisation. In the past the independence of the implementation of sanctions domain was guaranteed by the ISt regulation. 'The future will tell whether the organisation is sufficiently independent. For now the ISt regulation has lapsed and there is not yet a good substitute for it.' ... 'There is currently no provision to secure both staff and budget for the implementation of sanctions domain' (Tummers, 2012). In an earlier thesis the former situation with the ISt regulations was already criticised: 'I think the functional and personal independence of the ISt to the ministry should be better secured in regulations than is currently the case' (van Gerven-Mandjes, 2010).

A second challenge is the different working methods, scope and legal frameworks of Dutch NPMs. The different NPMs do not only visit different types of detention and with different frequencies, they also operate under different legal frameworks and in different (political) contexts. For some members monitoring places of detention is just one part of a much wider regulatory or inspection role. They may find it difficult to sufficiently prioritise visits to places of detention when there are other calls on their resources. Designation may result in a greater emphasis on monitor but it should be noted that in general, members have not been given additional resources to fund this. The IV&J expect the other organisations to deliver input for the annual NPM report so far the IV&J has had some problems collecting all the separate input from the NPMs.

In general the Dutch NPM seems to be quite effective. They have sufficient budget to carry out its tasks as NPM, most organisation are well recognised and receive positive views from the field. However there are some problems, especially on the area of efficiency and autonomy. Because of the large amount of organisations there is some part of overlap in inspection oversight. Some places are visited by up to five different inspection bodies on the field of torture prevention (for example the juvenile detention centres). Thereby inspections are done from different background and use different frameworks to determine whether there is misuse of powers for the detained. Lastly the coordinating task might give some of a struggle. However it is the level of autonomy which is the most worrying for the Dutch monitoring system. Three of the 6 NPM (with the largest number of institutions to inspect) are considered internal inspectorate bodies. Meaning that they are closely linked to their ministries. There lies a task within mainly with the Inspectorate of

Security and Justice to remain vigilant to their level of independence. From an efficiency standpoint the choice to appoint existing organisations proved the right one. Very little additional resources or powers needed to be allocated to fulfil its commitments under OPCAT. However when working together with so many different organisations good coordination is key, so far this has lagged and therefore the level of efficiency of the Dutch NPM is rated medium.

To conclude the table underneath shows the valuation of the different factors of the Dutch mode of implementation:

Dutch implementation mode	**Autonomy**	**Effectiveness**	**Efficiency**
Multiple existing bodies	Low	High	Medium

6.2 Monitoring places of detention in the United Kingdom[12]

'For the UK this model of appointing multiple organisations is the best. I don't see how we could have done it any other way in the UK. I don't see how a new body could have been created when other bodies are already doing the NPM tasks, it would have been impossible' (Paton, 31-5-2012).

6.2.1 Overview detention situation

Number of Prisons	140
Number of Police Cells	hundreds
Approximate number of NPM units	thousands
Approximate time to complete full inspection cycle	2,5-5 years
UK NPM	18 bodies were designated as part of the UK NPM, coordinated by Her Majesty's Inspectorate of Prisons (HMIP)
Budget for the NPM tasks	15-16 persons for the HMIP only.

6.2.2 UK NPM members

The UK NPM was established in March 2009 when the government decided that the functions of the mechanism would be fulfilled by the collective action of 18 existing bodies which visit or inspect places of detention. The following 18 bodies were chosen to fulfil the obligations under OPCAT:[13]

England and Wales

- Her Majesty's Inspectorate of Prisons
- Independent Monitoring Boards
- Independent Custody Visiting Association
- Her Majesty's Inspectorate of Constabulary
- Care Quality Commission
- Healthcare Inspectorate Wales
- Children's Commissioner for England
- Care and Social Services Inspectorate Wales
- Office for Standards in Education

Scotland

- Her Majesty's Inspectorate of Prisons for Scotland
- Her Majesty's Inspectorate of Constabulary for Scotland
- Scottish Human Rights Commission

[12] All result are based on interviews with Mrs Paton and Mr. Singh Bhui, and on documents published by the Spanish NPM.

[13] For a full explanation of each organisation see the First Annual Report of the United Kingdom's National Preventive Mechanism (2011).

- Mental Welfare Commission for Scotland
- Scottish Commission for the Regulation of Care

Northern Ireland

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

Her Majesty's Inspectorate of Prisons (HMIP) – Coordinating NPM

Her Majesty's Inspectorate of Prisons is an independent, statutory organisation which carries out regular inspections of places of detention to assess the treatment of and conditions for detainees. HMIP is responsible for inspecting all prisons in England and Wales, including young offender institutions; all removal centres, short term holding facilities, all police custody facilities, and in the future possibly all court custody facilities (UK NPM, 2011; 23, UK NPM, 2012; 52). The coordinating task for the UK NPM was given by the government to the HMIP that is why this organisation took the lead in the implementation of OPCAT.

Other UK NPM members

The UK NPM consists of many different organisations beside the HMIP. They all have a different background, legislative history, expertise etc. There are a few NPM members specifically appointed to monitor hospitals, elderly homes, they include; the Care Quality Commission, Healthcare Inspectorate Wales, Mental Welfare Commission of Scotland etc. The UK decided also to appoint the Independent monitoring boards into their NPM system. Those boards constitute volunteers from the community who visit police station, prisons and other places where people are detained with the goal of discussing the treatment and conditions of prisoners. For most organisations besides the HMIP the tasks under OPCAT are only a small part of their daily work.[14]

6.2.3 Implementation mode

The UK ratified OPCAT in December 2003 but did not designate its NPM until March 2009. A number of complexities may have prolonged the designation process. First of all there were already many bodies carrying out tasks which were similar to that of the NPM. While at an early stage a decision was made that the functions of the NPM would be performed by the collective action of existing bodies, the government still had to consider which existing bodies were OPCAT-compliant and should be designated. Secondly there were some gaps in coverage of places of detention, especially on the field of military detention and police custody. Thirdly because the UK government had to liaise with the administrations in Wales, Northern Ireland and Scotland over arrangements in those countries. Finally the government had to think about how to coordinate when appointing multiple bodies as NPM (UK NPM, 2011: 9, UK NPM, 2012: 7). During 2006-2007, the government consulted with relevant bodies about the composition of the NPM. In deciding which bodies should be designated the following criteria were used (UK NPM, 2011: 9):

- the statutory basis upon which the bodies operate gives them unrestricted access to places of detention and to detainees, including the power to make unannounced visits, and unrestricted access to information about detainees and their conditions of detention (or at least contains nothing to prevent such access and such visits)
- bodies should possess the independence, capability and professional knowledge to carry out visits.

[14] For a full explanation of each organisation see the First Annual Report of the United Kingdom's National Preventive Mechanism (2011).

In a written ministerial statement made to Parliament on 31 March 2009, the government formally designated 18 bodies which would make up the UK's NPM (UK NPM, 2011: 9). In the nearby future it is not unthinkable that additional bodies are added to the UK NPM (UK NPM, 2011: 9, Paton, 31-5-2012).

Coordination

Following designation of the NPM, it was agreed by members that Her Majesty's Inspectorate of Prisons (HMIP) would carry out the coordination and communication function of the NPM. The purpose of coordination is to promote cohesion among the NPM members, to facilitate a collective understanding of OPCAT and its requirements, and to encourage collaboration and shared learning. At the same time, the independence of each individual member of the NPM is respected, as the ability of each organisation to set their own priorities for the monitoring of detention (UK NPM, 2011: 10).

This role is performed by an NPM coordinator. This is a person appointed by HMIP to liaise with all NPM members, to share information and provide support. The coordinator represents all members of the NPM and coordinates them as well as contact with the SPT. Through working with each of the NPM members, the coordinator is able to gain an overview of the UK detention situation, identify common issues or gaps in protection. As of 2012 this function is fulfilled by Mrs. Paton.

Conclusion

The UK faced several challenges during the implementation process of OPCAT. Many of the challenges during the NPM implementation relate to its structure – notably its size and complexity (independence). The UK was the first NPM to assign multiple organisations and is the country with the most assigned bodies. At the moment 18 organisations are appointed NPM. Her Majesty's Inspectorate of Prisons (HMIP) is appointed as coordinating body.

6.2.4 Autonomy

Managerial autonomy

The UK system is mostly autonomous from a managerial perspective, but there are some problems. Technically speaking many of the inspectorates in the UK and here the people who work for them are civil servants. The recruitment for civil servants has been impacted by the crisis. The people who are already employed at the ministry need to be replaced sometimes. This means inspectorates may have to hire a person already employed in the ministry over an external solicitor. 'Because there are recruitment stop at the moment, if we want to employ a new person we have to get permission of the ministry of justice to do that' (Paton, 31-5-2012). This is one of the biggest issues the UK NPMs have with their independence. 'The ministry of Justice tries to interfere with our recruitment, not in terms of who we recruit but in terms of how many (Paton, 31-5-2012). The main reason for this lies in the financial crisis.

Policy autonomy

All of the UK NPMs can determine themselves which places of detention to visit and which policies to use. However, some organisations within the NPM tend to fall more under governance policy than others. For example the inspector of prisons has its own policy. But some of the other NPM members try to incline to government policies and habits much more than the inspectorate for prisons does. There are some differences between the organisations which makes it difficult when the NPM as a whole works together. In a recent example, 'one organisation said the government policy is this so that's what we should do. And we say we don't care what government policies say this is what we are going to do. So it might be difficult at times' (Paton, 31-5-2012).

Structural autonomy

The UK NPM is completely autonomous to choose its members according to OPCAT standards. It is difficult to give an overall picture of all the NPMs but the inspector of prisons is made up out of a range of people from different backgrounds, there are former prison staff, social workers, lawyers, a health care team, and drug specialists. In general employees come from a broad range of backgrounds and the NPMs are free to set the criteria for recruiting those people.

Financial autonomy

The UK NPM is financially autonomous, apart from the recruitment issue, meaning that the organisations can determine themselves where to spend the budget on. There is nothing in the British legislation that would prevent NPMs from having funding from other sources, in practice they just receive money from the ministry of Justice, or other departments.

Legal autonomy

The inspector of prison has the same legal personality as an ombudsman, falling directly under the ministry. Meaning that he is his own legal personality and all the other staff are civil servants who support him. The appointment of the head of most of the UK NPM could be considered a political appointment. After the head of the inspectorate leaves an advertisement is placed in the paper and everyone is allowed to apply to this. The candidates are subjected to public appointment procedures and processes, which are agreed on by parliament. But the people who manage the appointment are from the ministry of justice. Once they select an individual they put it forth to a parliamentary committee and they can vote on it. 'It has happened that (not with members of the NPM) that people put forth by the ministry are voted down by the parliamentary committee (Paton, 31-5-2012).

Some of the other NPM, for example the Scottish human rights commission do fall directly under parliament. 'That arrangement is much more independent than our arrangement. But I would say generally speaking in the UK it is very, very rare to be created as a parliamentary body' (Paton, 31-5-2012). In the UK it is much more common to have an inspectorate which falls under a ministry and has to report directly to the minister. In Scotland they are much more relaxed about creating bodies that fall under parliament. 'I personally have worked for both a Scottish body which fell directly under parliament as for the Inspector of Prisons which falls under the ministry and I definitely noticed the difference. The main difference is that there is far less interference in your work. Recruitment is for example not such a big issue' (Paton, 31-5-2012). Reporting directly to parliament would be much more transparent and may help improve the perception for the general public.

Interventional autonomy

All of the UK NPM members measure their own performance. But there is always a possibility that the government department will in some way measure the performance. This will not happen officially but they can informally measure how the organisations are performing. This can happen for example through a justice committee, a health committee or an audit committee. 'But that last one hasn't happened since I've been here' (Paton, 31-5-2012). So there are external evaluation measures in place but none of them are necessarily set up in a formalized way, nor do they comment on the policies used for inspections. It could be possible that (members of) the UK NPM are subjected to rewards or sanctions in good or bad behaviour. 'If the government was very upset with a certain body it could somehow get involved, and the ultimate form is that the government could make legislation getting rid of the body or to change it someway' (Paton, 31-5-2012).

Conclusion

According to the requirements under OPCAT the UK NPM does not conform to the right standards concerning autonomy. The main problem is that the inspectorates can in some cases not appoint new members to their organisations without permission from their respective ministries. There are also some minor autonomy deficiencies concerning the arias of policy, legal and interventional autonomy. Not all of the different members of the NPM face the same problems concerning level of independency, however since OPCAT requires that each of the NPMs on itself is valued as sufficiently autonomous the conclusion is that these requirements are not met for the UK NPM system. In other words because 4 out of 6 categories are rated insufficient, the UK NPM's level of autonomy is rated low.

6.2.5 Effectiveness

Creating Public Value

From a financial perspective the NPM in the UK is well resourced in comparison to other countries. Some of the members are having budget cuts because of the financial crisis, which may restrict the frequency of visiting but every organisation is still carrying out inspections. No organisation was given additional money when they were appointed as an NPM member, except the inspectorate of prison. Because they were selected as coordinator they were given money to fund the person doing the coordinating job.

One of the advantages of the multiplicity of the UK NPM that although the inspectorate of prisons visits each prison every five year, with a follow up after that time what effectively means every 2, 5 year, there is also the independent monitoring board which visits much more frequently. Each prison is in practice getting visited at least once a week. In the statures it states that every independent monitory board should visit their prison twice a month. But in practice it tends to be once or more per week. 'I think it would be very rare in practice for a prison to go a week without a visit from the independent monitory board. That goes for every prison' (Paton, 31-5-2012). For the other places of detention the time in between visits varies. Before implementing OPCAT the court and police cells were insufficiently inspected. Efforts have been made to close this gap.

Building Operational Capacity

The operational capacity and diversity of the UK NPM is very high. Some organisations perhaps not have the expertise on medical terrain as is recommended, but in general all the organisations have the required capabilities and knowledge.

Within the inspectorates the inspectorate the gender balance is good. The representation of minorities could be improved. That is an issue in all government appointments in the UK. But in relation to the NPM this is especially a problem for the independent monitory boards. Typically the volunteers are old, white, retired professionals and often male. That's not a representation of society. Some of the boards are really taking efforts to recruit younger people and minorities. Each of the institutions of the NPM has the powers required to carry out the tasks under OPCAT. At the moment about 35% of all the inspections is done unannounced 'we want to go to fully unannounced in a few years' (Singh Bhui, 31-5-2012).

Expanding Support and Authorisation

All of the UK NPM members are very well known in the field. 'That's a huge asset. Some of our NPM members have been around for such a long time they became part of the fabric' (Paton, 31-5-2012).

The way the NPM interact with the field very much varies between the NPMs. The inspectorate of prisons keeps itself very separate from the organisations it inspects. Normally the inspectorate does not go back to the inspected place of detention until the follow up visit. There is internal discussion on changing the attitude towards the field, more towards helping the places of detention implement the recommendations. This varies between the different NPM members, some already

do this. 'At the moment we come in we leave and we tell them what to do. But we are thinking about ways to have more of a dialogue with the places we inspect to try and encourage them to implement our recommendations in the times in between our inspections (Paton, 31-5-2012).

In recent years in the UK there have been many complaints about over inspection, especially from prisons. 'Some people really see the value of it, and to be honest it are probably the better prisons that see the value in it, because they see it as a tool to improve. Whilst the bad prisons usually see it as something they get criticized from' (Paton, 31-5-2012). So even within the field of prisons there is a variation about how the inspectorates are being valued. Several years ago there were efforts to merge some of those bodies into bigger inspections, in order to reduce the burden of inspections. The inspector of prisons was able to resist an effort of becoming part of a much bigger inspectorate. But that is an issue what will be coming back in the future, every new government wants to get rid of public bodies in order to balance the budget.

In order to further expand the support and authorisation of NPMs the annual report gives information and feedback to the government, SPT and other or other organisations in the field. The coordinator of the NPMs has regular meetings with the government in order to enhance the legitimacy of the organisations.

Conclusion

From an effectiveness perspective the UK NPM manages to create public value, build operational capacity and expand its support and authorisation. Almost all of the tasks under OPCAT are effectively carried out. There are a few areas which may need some additional attention; in the past less attention is paid to the inspection of police and court cells, but plans are made to increase the professional monitoring of those places. Since the UK NPM system scores sufficiently on each of the three effectiveness dimensions it is assessed as highly effective. 'I would say the NPM of the UK is in a pretty good position in terms of resources and powers and everything it needs to do as an NPM. There are probably some tiny issues that we could work towards improving. But I do think that over time we will get better and better' (Paton, 31-5-2012).

6.2.6 Efficiency

The UK government made a logical decision from an efficiency point of view to not create a new organisation. Most of the NPM tasks were already carried out in the UK and therefore few additional funds were necessary for the country to comply with OPCAT. The problem seems not to be a lack, but a surplus of organisations capable of carrying out NPM tasks. In the UK a lot of efficiency was created by appointing a staff member of the Her Majesty's Inspectorate of Prisons responsible for the coordination between the different NPM members. 'One of the big advantages of being an NPM is bringing together all these different organisations with the same goal: monitoring places of detention' (Paton, 31-5-2012). From an efficiency point of view the UK NPM is therefore assessed as highly efficient.

6.2.7 Conclusion UK

The UK implemented the multiple bodies mode of implementation. The UK government faced several challenges during the implementation process of OPCAT. Many of the challenges were related to its structure – notably its size and complexity (independence). The UK was the first NPM to assign multiple organisations and is the country with the most assigned bodies. At the moment 18 organisations are appointed NPM. Her Majesty's Inspectorate of Prisons (HMIP) is appointed as coordinating body.

According to the requirements under OPCAT the UK NPM does not conform to the right standards concerning autonomy. The main problem is that the inspectorates can in some cases not appoint new members to their organisations without permission from their respective ministries. There are also some minor autonomy deficiencies concerning the arias of policy, legal and interventional autonomy. Not all of the different members of the NPM face the same problems concerning level of independency, however since OPCAT requires that each of the NPMs on itself is valued as sufficiently autonomous the conclusion is that these requirements are not met for the UK NPM

system. Because the UK NPM falls short on some key autonomy issues, the UK NPM's level of autonomy is rated low.

From an effectiveness perspective the UK NPM manages to create public value, build operational capacity and expand its support and authorisation. Almost all of the tasks under OPCAT are effectively carried out. There are a few areas which may need some additional attention; in the past less attention is paid to the inspection of police and court cells, but plans are made to increase the professional monitoring of those places. Since the UK NPM system scores sufficiently on each of the three effectiveness dimensions it is assessed as highly effective.

The UK government made a logical decision from an efficiency point of view to not create a new organisation. Most of the NPM tasks were already carried out in the UK and therefore few additional funds were necessary for the country to comply with OPCAT. The level of efficiency is rated as high.

To conclude the table below shows the valuation for the UK mode of implementation:

UK implementation mode	**Autonomy**	**Effectiveness**	**Efficiency**
Multiple existing bodies	Low	High	High

6.3 Monitoring places of detention in Sweden[15]

6.3.1 Overview detention situation

Number of Prisons	52
Number of Police Cells	Not a complete overview
Approximate number of NPM units	1000
Approximate time to complete full inspection cycle	< 2 years
Swedish NPM	Parliamentary Ombudsman (Riksdagens Ombudsmän) and the Chancellor of Justice (Justitiekanslern)
Type of NPM	Existing bodies (Ombudsman)
Budget for the NPM tasks	5 full-time staff members (+-300.000)

6.3.2 Swedish NPM

In Sweden the Ombudsman has been appointed as NPM together with the Chancellor of Justice. However in practice only the Ombudsman carries out NPM tasks. 'As follows from the letter to Mr Gillibert (SPT) the Parliament Ombudsmen is now also formally appointed as a national preventive mechanism, whereas the Chancellor only from a formal point of view fulfills this task' (Rustand, 23-3-2012).

The Swedish ombudsman is based in Stockholm and consists of 4 actual ombudsmen. Each one of them has the responsibility for a specific area. The chief ombudsman has the responsibility over the prison inspections, and is therefore also the head of the NPM. Normally each department with an ombudsman consists of eight to ten lawyers and then you have some secretaries.

The inspections are just a very small part of the Ombudsman activities, the Ombudsman has a target of spending 40 days a year on inspections. Not all the ombudsmen have places under their supervision where people are deprived of their liberty. 'I would say that the ombudsman will carry out between 15 and 20 maximum visits to places of detention a year when talking about OPCAT.

After the ratification of OPCAT a specific unit was created to fulfill the OPCAT tasks. This unit consists of 4 persons. 'We are the ones who carry out the NPM tasks, so it is quite new. There only task is to do the NPM tasks. So we don't deal with complaints we only carry out the inspections.' This was done after recommendations of the SPT was that if you chose an ombudsman to become the NPM the tasks required under OPCAT should be carried out in a separate unit.

6.3.3 Implementation mode

Sweden ratified OPCAT in 2006. From the very beginning the government appointed the Ombudsman and the Chancellor of Justice as the Swedish NPM. Therefore Sweden opted for the implementation of an existing body to carry out the tasks under OPCAT.

[15] All result are based on interviews with Mr Rutstand and Mr. Jansson, and on documents published by the Swedish NPM.

The appointment process started by the government stating they already had bodies doing the job as NPM. Before the Swedish ombudsman was appointed they did already carried out inspection tasks, but that was just a small part of the activities the ombudsman conducted. But the ombudsman was doing more visits than the chancellor of justice: 'we have only carried out one, or maybe two inspections in the last three year' (Rustand, 23-3-2012). Neither organisations wanted the tasks of NPM and wrote a couple of letters about that to the Swedish government. 'Neither organisations were asked to become an NPM' (Jansson, 26-3-2012). But the government appointed both organisations anyway because they found that those organisations already lived up to the expectations of OPCAT. 'So it wasn't a cooperative designation process' (Jansson, 26-3-2012)

Conclusion

In Sweden the Ombudsman and the Chancellor of Justice have been appointed as NPM. However both organisations did not want to become an NPM. The Swedish government however felt that with those two organisations they already had organisations that lived up to the expectations of OPCAT. The whole implementation process was not cooperative because the Swedish government chose to appoint both organisations anyway.

6.3.4 Autonomy

Managerial autonomy

The Swedish NPM has full managerial autonomy concerning HRM and financial management.

Policy autonomy

The Swedish NPM has full autonomy in deciding which places to visit and which policy instruments to use for those visits.

Structural autonomy

The Swedish NPM is completely free to choose its employees according to OPCAT rules.

Financial autonomy

The Swedish NPM is completely dependent on public funding. However the government has no budgetary power, this lies completely with parliament. 'Money has never been an issue for the Ombudsman, I would say that we always get what we asked for, for some reason. But the parliament has never any objections when the ombudsman asks for more money. As long as they give good reasons for it of course (Jansson, 26-3-2012)

Legal autonomy

The Riksdagens Ombudsmän is an ombudsman, meaning that the legal autonomy of the organisation lies with one person who subsequently has the monopoly on taking decisions. The Ombudsman is chosen by parliament for a period of 6 years. 'From a legal Parliament is the only body we are in some respects dependent on. I don't think it has ever occurred that an Ombudsman has been removed from his job. Some of them might have chosen to go freely. But the parliament has never removed one of them. So I would say we have a high degree of independence, especially from the government' (Jansson, 26-3-2012)

However the NPM unit within the Ombudsman is not as autonomous. It depends heavily on the ombudsmen, who don't do the actual inspections, to determine whether the reports are published and recommendations are put forward.

Interventional autonomy

The Swedish NPM has full autonomy in setting the goals and norms of the organisation. There is no external control whether those goals are met. There are only some financial rules which are controlled by the audit department of the parliament. Because the organisation is not subjected to government interventions it does not receive sanctions and rewards in case of good or bad performance.

Conclusion

The Swedish Ombudsman itself is a highly autonomous organisation. However within the Ombudsman the NPM unit is not autonomous at all. It depends heavily on the ombudsmen, who don't do the actual inspections, to determine whether the reports are published and recommendations are put forward. But on all the aspects looked at the only conclusion can be that the Swedish Ombudsman is highly autonomous.

6.3.5 Effectiveness

Creating Public Value

The Swedish ombudsman does not feel itself capable of creating enough public value. 'no, not really. I would say that Sweden is a vast country. So I would say approximately 10 persons would be needed to do this on a full time basis. Perhaps. But of course now we have four people and we have to deal with that and try to make the best of the situation. With good planning and good strategies, that will be the most important thing. It is better than nothing' (Jansson, 26-3-2012) But nonetheless the Ombudsman thinks it will be able to visit most places of detention (excluding police cells) within 2 years. But they have just started, so the need to see first how things work out.

The Swedish ombudsman did not receive a complete list from the government but managed to make an overview of all the places of detention themselves.

Building Operational Capacity

The Swedish Ombudsman has chosen their members according to OPCAT rules. Their employees seem to have the required capabilities, powers and professional knowledge but are not of a sufficiently diverse background to carry out its tasks as NPM (almost all the employees are lawyers).

Expanding Support and Authorisation

The main problem the Swedish have has to do deal with is the complicated internal situation. It is only the Ombudsman who has given us the specific task to visit a certain place. They have to make statements or recommendations, she is the only one who can do that. It is more or less in her name, and she has to sign it before we can publish' (Jansson, 26-3-2012). This means that the NPM unit itself is incapable of reaching out to the field themselves. This has led to a very reluctant approach to the inspected organisations.

Conclusion

Although the Swedish Ombudsman considers itself incapable of creating enough public value, in practice they manage to do a quite effective job. They manage to visit all places of detention within 2 years and have the right powers and knowledge to carry out the visits. The main problem lies with the relation between the ombudsmen and the NPM unit, this difficult relationship makes it hard to come across effective in the field. Creating public value and the operation capacity seems to be sufficient, however expanding support and authorisation is not, therefore the Ombudsman is rated medium on effectiveness.

6.3.6 Efficiency

From a governmental perspective it might have been the most efficient in financial terms to appoint the Ombudsman and the Chancellor of Justice as NPM. However both organisations rejected (or tried to reject) the appointment as NPM. Part of the reason for that is there was no public debate and therefore it did not became clear if there were any other organisations more suited or more willing to take on this role. 'It didn't fit with their conception of what they did. It's the same thing if you can't persuade or convince the organisation upon which you delegate the task this is a task that they can do and they want to do, then you are going to have a problem' (Evans, 31-5-2012). The government could have prevented the resentment under the NPM members therefore the level of efficiency is rated as low.

6.3.7 Compliance with OPCAT

In Sweden the Ombudsman and the Chancellor of Justice have been appointed as NPM. However both organisations did not want to become an NPM. The Swedish government however felt that with those two organisations they already had organisations that lived up to the expectations of OPCAT. The whole implementation process was not cooperative because the Swedish government chose to appoint both organisations anyway.

The Swedish Ombudsman itself is a highly autonomous organisation. However within the Ombudsman the NPM unit is not autonomous at all. It depends heavily on the ombudsmen, who don't do the actual inspections, to determine whether the reports are published and recommendations are put forward. But on all the aspects looked at the only conclusion can be that the Swedish Ombudsman is highly autonomous.

Although the Swedish Ombudsman considers itself incapable of creating enough public value, in practice they manage to do a quite effective job. They manage to visit all places of detention within 2 years and have the right powers and knowledge to carry out the visits. The main problem lies with the relation between the ombudsmen and the NPM unit, this difficult relationship makes it hard to come across effective in the field. Creating public value and the operation capacity seems to be sufficient, however expanding support and authorisation is not, therefore the Ombudsman is rated medium on effectiveness.

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This has led to the table underneath:

Swedish implementation mode	**Autonomy**	**Effectiveness**	**Efficiency**
existing body (ombudsman)	High	Medium	Low

6.4 Monitoring places of detention in Spain[16]

6.4.1 Overview detention situation

Number of Prisons	90
Number of Police Cells	Hundreds
Approximate number of NPM units	Not a complete overview
Approximate time to complete full inspection cycle	> 5 years
Spanish NPM	Ombudsman (*Defensor del Pueblo*)
Type of NPM	Existing body (Ombudsman)
Budget for the NPM tasks	7 full-time staff members (+- 500.000)

6.4.2 Spanish NPM

In Spain the Ombudsman (*Defensor del Pueblo* in Spanish) is appointed as NPM. The figure of the Ombudsman was introduced into the body of law in Spain in the Constitution of 1978. As an institutional assurance of the independent status of the Office of the Ombudsman, the appointment of the holder of the Office requires a special three-fifths majority of both the upper and lower houses of parliament (Defensor del Pueblo, 2011; 16-17).

His/her role is defined as 'high commissioner of the Spanish Parliament charged with defending the fundamental freedom and rights enshrined in Chapter One of the Constitution' (Defensor del Pueblo, 2011; 16). To that end the Ombudsman is charged with monitoring the activities of the public administration, the concept of administration meaning all public administration bodies in Spain. As from November 5, 2009 when the ombudsman was appointed NPM inspections carried out included a more specific preventive component (Defensor del Pueblo, 2011; 17). In order to adjust to this more preventive mandate attempt have been made to set up a working method aimed at detecting structural and procedural problems that might help prevent torture or mistreatment. This is done by carrying out the tasks agreed to under OPCAT, specific attention is paid at; location, habitability, security, sanitation and social conditions, living conditions, compliance with the requirements of law and other issues (Defensor del Pueblo, 2011; 18-24). Within the Ombudsman 7 persons in total have been assigned for the NPM task, four legal advisors, two administrative staff and one manager (Pino Gamero, 16-5-2012).

The scope of places visited by the Spanish NPM include; 'Holding cells and other short-term facilities of the state security forces and of regional and police forces, holding cells in courthouses, army, navy and air-force basis, militariy training centres, detention centres for foreign nationals, military detention centre, civil and military prisons, centres for young offenders, hospitals, Special schools and training centres for juveniles, vehicles for transport, holding facilities, Spanish-flagged vessels and aircrafts.

[16] All result are based on an interviews with Mrs Pino Gamero , and on documents published by the Spanish NPM.

6.4.3 Implementation Model

Spain ratified OPCAT in March 2006, however it took until the end of 2009 before the Ombudsman was appointed NPM. According to OPCAT the NPM should be appointed at the most one year after ratification, in Spain it took over 3 years. The main cause for this delay was that the government took a long period of reflection on how best to establish an NPM (Defensor del Pueblo, 2011; 14). During this period of reflection a consultation process involving various public bodies, including the ombudsman at the national level as well as ombudsmen on regional levels took place. The regional Ombudsmen, including the ombudsman in Catalonia and the Bask County were also interested in becoming an NPM. The government also contacted different NGO's, universities and other entities of civil society and had some meetings with them during those 3 years. The government consequently asked each institution to make a proposition of what they thought should be the form of the NPM. The ombudsman proposed to be assigned as NPM since they already had a lot of experience in their thirty years of visiting places of deprivation of liberty, which could be an advantage in becoming an NPM. The organisation already had all the necessary capacities and powers in place that are required for an NPM, such as being capable of starting an investigation with the administrations and visiting any place of deprivation of liberty. The ombudsman of Catalonia also proposed himself as NPM, other organisations talked about having a completely new organisation as NPM, as happened in France with the Contrôleur Général. Their main argument was that creating a new organisation could raise awareness for the prevention of torture. An additional two proposals were also received. The government deliberated on all the different proposals. The final decision however was delayed for over a year due to the Spanish general election process. On the 3rd of November 2009 the government finally presented the proposal for appointing the Ombudsman as NPM to parliament. The Spanish government never made a public statement about why they appointed the Ombudsman. 'But I guess one of the reasons is that we already have a good reputation among the citizens of Spain. That could have been useful as NPM. Maybe also because we already are an organisation we did need more money but it was not as necessary as when a completely new organisation would have required. Furthermore there was no need for a new law, we already had the right requirement there just needed to be a smaller reform. So all in all it was an easy solution for them and the choice for the ombudsman was a respected solution in Spain' (Pino Gamero, 16-5-2012).

Conclusion

At the end of 2009 the Spanish government appointed the Ombudsman (Defensor del Pueblo) to become the Spanish NPM. The appointment process took a long time because Spain had a deliberate political debate about the implementation of OPCAT. In the end the Ombudsman was appointed because it already had experience in carrying out inspections, it possessed the right powers and legal framework and it did not need much additional funds in order to function successfully as NPM.

6.4.4 Autonomy

Managerial autonomy

The Spanish NPM has full managerial autonomy concerning HRM and financial management.

Policy autonomy

The Spanish NPM has full autonomy in deciding which places to visit and which policy instruments to use for those visits. 'The government could call if one of the places of detention has been in the news and they want it inspected. But this has never happened. I think we would take it into consideration. We always do unannounced visits so we could at this to our schedule' (Pino Gamero, 16-5-2012).

Structural autonomy

The Spanish NPM is completely free to choose its employees according to OPCAT rules. 'The ombudsman is completely independent from the government. It depends in its appointment and their budget only from parliament. And we didn't have any problems with that. I think we haven't had any problems in the 40 years of our existence' (Pino Gamero, 16-5-2012).

Financial autonomy

The Spanish NPM is completely dependent on public funding. However the government has no budgetary power, this lies completely with parliament.

Legal autonomy

The Defensor del Pueblo is an ombudsman, meaning that the legal autonomy of the organisation lies with one person who subsequently has the monopoly on taking decisions. The Ombudsman is chosen by parliament for a period of 6 years.

Interventional autonomy

The Spanish NPM has full autonomy in setting the goals and norms of the organisation. There is no external control whether those goals are met. There are only some financial rules which are controlled by the audit department of the parliament. Because the organisation is not subjected to government interventions it does not receive sanctions and rewards in case of good or bad performance.

Conclusion

The Spanish NPM is autonomous on each of the aspects looked at in this thesis; it is therefore assessed as having a high level of autonomy. 'The Ombudsman's independence is guaranteed by law, and is compliant with Art. 18.1 of OPCAT' (Defensor del Pueblo, 2011; 14).

6.4.5 Effectiveness

Creating Public Value

From a public value point of view it would have been useful if the Spanish NPM had a larger budget, the more money they got, the more visits they are able to do. But for the moment with the financial situation in Spain the Ombudsman considers it lucky by being able to employ 7 full-time staff to the prevention of torture. Besides the appointed staff the NPM unit can also use all of the resources of the institution, consisting of almost 200 persons. It is unlikely that the budget for NPM tasks will increase in the near future. 'I think we actually will be lucky if the budget of the ombudsman is not diminished. We have to understand it but the situation (financial crisis) is very complicated in Spain' (Pino Gamero, 16-5-2012).

The Spanish NPM did not receive a list with all the places of detention in Spain. They did ask for some additional information but for now have not yet received it. That is one of the reasons why the Ombudsman cannot yet make estimations on how long it takes to do a complete inspection cycle. 'We have hundreds and hundreds of places of deprivation of liberty. For now our goal is more limited to start with visits and get one day to the point where we have seen all the places' ... 'So I would not say that we are able to do it more than every 5 years, and then I'm really, really positive' (Pino Gamero, 16-5-2012).

Overall the Ombudsman does think they are able to create public value. 'Yes, I think we do. Of course if we had more staff we could do a better job. We'll see how effective it is in the following years. But at least we are doing our work according to OPCAT, doing visits and giving recommendations to the public administration and some of them are being affected. But I think for the resources that we had in 2010 and the report we going to present next month about 2011 anyone can say that we are giving an effective job' (Pino Gamero, 16-5-2012).

Building Operational Capacity

The Spanish Ombudsman has chosen their members according to OPCAT rules. Their employees seem to have the required capabilities and professional knowledge and are of a sufficiently diverse background to carry out its tasks as NPM (although heavy focus on employees with a legal background). The Ombudsman does not consist of people with a medical background. 'If we had more budget we would like to have one doctor in our team. At least we can contract them for certain visits. Our team is not as multidisciplinary as OPCAT requires but at least we solve this by working with external experts' (Pino Gamero, 16-5-2012).

The Spanish Ombudsman has the right powers to carry out the task under OPCAT. 'Yes, one good thing of being an ombudsman before appointed NPM is that we already have this. The act of the ombudsman provides us to go anywhere unannounced to see into any documents, even the most private ones. Even medical records. The act of protection of data in Spain has a specific statement saying that the ombudsman should have access to all documents. We never find any problems in that' (Pino Gamero, 16-5-2012).

Expanding Support and Authorisation

The Spanish Ombudsman has some problems with expanding support and authorisation. Most of those problems stem from the fact that Spain has strong regional governments. Any region has its own regional ombudsman which is allowed to do inspections. For example in the region of Andalusia they can inspect the local police stations but not the prisons or the national police stations. Which places they can visit depends on the region. In Spain not all regions agreed with the appointment of the national Ombudsman as NPM. Therefore the parliament of Catalonia for example appointed their own ombudsman as NPM. The national ombudsman did not agree with this appointment. 'Because we as the national ombudsman believe that the competence for international affairs lies with the parliament of Spain not with the regional parliaments' (Pino Gamero, 16-5-2012). However this example shows that the Ombudsman has problems in expanding its support and authorisation throughout the whole country.

But within the field itself the organisation has less problems. 'The organisation is very well known in the field. Normally prisoners know us. All the prisons know the ombudsman' (Pino Gamero, 16-5-2012).

Conclusion

On each of the three dimensions of effectiveness the Spanish NPM has some problems. If they would have had more budget they would have been more successful at creating public value. All the prerequisites for doing independent and preventive inspections are in place. They are successful at building operational capacity. The biggest problem for Spain seems to be from the expanding support and authorisation perspective; in some parts of the country parliament prefer the regional ombudsman to carry out the NPM tasks. The overall assessment of the Spanish NPM is that they score medium on effectiveness.

6.4.6 Efficiency

The Spanish government appointed the Spanish Ombudsman as NPM after a long period of consultancy with many different organisations. What they did well is give all the organisations already involved in the prevention of torture the possibility to come with ideas how to implement OPCAT and create an NPM. What makes it a bit weird is that they asked from all the possible organisations a plan on how to implement OPCAT but that it does not clarify the reasons why the Ombudsman in the end was chosen to become the Spanish NPM. This led to a bit of fraction, especially between the local ombudsman and the national ombudsman. From an efficiency point of view it might have been more efficient to include the regional ombudsmen as well in the NPM arrangement. Not only because they know a lot about the region and its places of detention but also changing the attitude of the local branches of government towards working together instead of counteracting. The level of efficiency is assessed as medium.

6.4.7 Conclusion Spain

At the end of 2009 the Spanish government appointed the Ombudsman (Defensor del Pueblo) to become the Spanish NPM. The appointment process took long because Spain had a deliberate political debate about the implementation of OPCAT. In the end the Ombudsman was appointed because it already had experience in carrying out inspections, it possessed the right powers and legal framework and it did not need much additional funds in order to function successfully as NPM.

The Spanish NPM was found to be autonomous on each of the aspects looked at in this thesis; it is therefore assessed as having a high level of autonomy.

On each of the three dimensions of effectiveness the Spanish NPM has some problems. If they would receive a larger budget they would have been more successful at creating public value. All the prerequisites for doing independent and preventive inspections are in place. They are successful at building operational capacity. The biggest problem for Spain seems to be from the expanding support and authorisation perspective; in some parts of the country parliament prefer the regional ombudsman to carry out the NPM tasks. The overall assessment of the Spanish NPM is that they score medium on effectiveness.

From an efficiency point of view it was a good choice to appoint the Ombudsman as NPM. They already had most of the needed powers and did not neat much additional resources in order to carry out OPCAT. However the government could have increased the efficiency of NPMs by including the regional ombudsman in the NPM system. Therefore the level of efficiency is rated as medium.

The results for the Spanish NPM are summarized below:

Spanish implementation mode	**Autonomy**	**Effectiveness**	**Efficiency**
existing body (ombudsman)	High	Medium	Medium

6.5 Monitoring places of detention in France[17]

'Among the different NPMs I think the French NPM is considered as one which is well equipped from a financial point of view, staff point of view as well as from a legal point of view' (Launay-Rencki, 10-5-2012).

6.5.1 Overview detention situation

Number of Prisons	190
Number of Police custody facilities	+- 4000
Approximate number of NPM units	5000
Approximate time to complete full inspection cycle	+- 5 years
French NPM	General Inspector of Places of Deprivation of Liberty (Contrôleur Général des Lieux de Privation de Liberté)
Type of NPM	New body (Independent external inspectorates)
Budget for the NPM tasks	4 million Euros

6.5.2 French NPM

The Inspector General of places of deprivation of liberty (CGLPL) is an independent authority created by the Law of 30 October 2007 further to the adoption by France of the optional protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The CGLPL started its activity on 13 June 2008, date on which Jean-Marie Delarue was appointed Inspector General (CGLPL, 2011).

The objective of the CGLPL is to ensure that the conditions of care for persons deprived of their liberty respect their fundamental rights and to prevent any infringement of such rights – right to dignity, freedom of thought and conscience, maintenance of family ties, care, work, training (CGLPL, 2011; section 9, page 2). To meet this objective the CGLPL, in addition to referrals and on-site investigations, carries out visits to any place of deprivation of liberty; either unannounced or scheduled several days before arriving at the establishment (CGLPL, 2011; section 9, page 2). Visits to establishments are particular based on information sent by any person having knowledge of the place, the personnel or the persons deprived of liberty themselves. During the visits teams consisting of two to five inspectors or more depending on the size of the establishment, they visit the site to check the living conditions of persons deprived of their liberty, investigate the state, organisation and operation of the establishment and with this in mind have confidential conversations with inmates and personnel. At the end of each visit, the inspectors draw up a draft report and send it to the governor of the establishment who gets the change to write a reaction on the report. Once in possession of the governors observation the final version of the report is drawn and send to the Minister(s) concerned. This visit report is finally published on the CLGPL internet site after receipt of any observations from the Ministry(ies) (CGLPL, 2011; section 9, page 2).

[17] All result are based on interviews with Mr. Delbos and Mrs. Launay-Rencki, and on documents published by the French NPM.

The scope of places of deprivation of liberty the French NPM covers include; (all kinds of) prisons, healthcare establishments that receive persons admitted to hospital compulsorily, establishments placed under the joint authority of the Ministry of Health and the Ministry of Justice, police custody premises, administrative detention centres and premises, transit zones at ports and airports, cells in court, closed educational institutions and any vehicle used for transport of persons deprived of their liberty (CGLPL, 2011; section 9, page 2-3; Launay-Rencki, 10-5-2012).

6.5.3 Implementation model

Before and after ratifying OPCAT in 2008 there was a debate in France about which organisation to appoint as NPM. There were two very important developments in the implementation process. The first one was a report written by the president of the higher court of justice, he had a mandate to write about the external control of the prisons. Among the recommendations he made he pointed out the need for an external institution which was devoted on the inspection of prisons and that the internal inspection bodies weren't enough and that you therefore had to have a brand new institution (Launay-Rencki, 10-5-2012). This rapport eventually led to the choice to create a completely new organisation which is how the Contrôleur Général des Lieux de Privation de Liberté was created in order to carry out the tasks set under OPCAT.

In France they chose an organisational model based on the ombudsman legal position, meaning that the president of the Republic (Sarkozy) appointed one person to becoming the Inspector General (Mr. Delarue). He was appointed after the law passed in October 2007 and he was officially appointed in spring 2008. Consequently he was given a certain budget and complete freedom in choosing his own staff and working methods. So mr. Delarue was in full charge of recruiting his own staff by his own criteria. He chose to appoint a very diverse team, people from different ministries and with different experiences, for example old policemen, former governors, psychiatrists, former head of hospitals etc. In this way the Inspector General managed to appoint a group with a diverse background and a lot experience with people mostly at the end of their careers. After the creation of the team the CGLPL began its visits in July 2008 (Launay-Rencki, 10-5-2012).

However after the creation of the CGLPL there was still more than one organisation responsible for the inspection of prisons. There were actually four, the ombudsman, the ombudsman for children, the commission for the control of security forces and the CGLPL. In 2010 this led to a big debate which was led by Balladeur, who was in charge of writing a report about the modernisation of the administration and the political institutions. His report ended with the conclusion that there should be one defensor of rights. He recommended that all the separate organisations should be concentrated in one body, which would be the *'Defenseur the Droits'*. He estimated that this one organisation would have a bigger impact then when the organisations would be kept separate. So there was a parliamentary debate about this in the senate, (the national assembly), which was about the merging of all the institutions into one. But in fact the parliament opposed the complete merging of all organisations and decided that the Contrôleur Général should stay apart from the other organisation whilst the remaing three institutions merged into the defensor of right. The reason why the Contrôleur Général was kept apart was that parliament felt that the preventive nature of OPCAT would be harmed by placing the task at an organisation which is mostly reactive in nature. This made the tasks of the CGLPL very clear they should focus on the normal functioning of the institution and not to restore or repair it following an incident (Launay-Rencki, 10-5-2012).

Conclusion

The Inspector General of places of deprivation of liberty (CGLPL) is the newly created organisation for the prevention of torture in France. As with other newly created organisations, France faced several challenges in the implementation of OPCAT. Many of the challenges during the creation of the CGLPL had to do with the (legal) place of the organisation within the field of prevention of torture. Although there were other organisations involved in torture prevention, most of those organisations were reactive in nature. Eventually parliament emphasized the fact that the CGLPL was created with a focus on the preventive nature of OPCAT and should only carry out the tasks set under OPCAT.

6.5.4 Autonomy

Managerial autonomy

The French NPM has full managerial autonomy concerning HRM and financial management.

Policy autonomy

The French NPM has full autonomy in deciding which places to visit and which policy instruments to use for those visits. 'We don't want to be a sort of fireman, intervening when there is a problem. We don't want that role. The fact that we are a preventive mechanism allows us to intervene in some establishments were everything is alright. To be able to set a sort of benchmark for what works and what doesn't' (Launay-Rencki, 10-5-2012).

Structural autonomy

The French NPM is completely free to choose its employees according to OPCAT rules. However this power lies exclusively at (the head of) the Contrôleur Général who is appointed directly by the president of the republic. There are two guarantees for his independence, he is not revocable and his term is not renewable.

Financial autonomy

The French NPM is completely dependent on public funding. However the government has no budgetary power, this lies completely with parliament.

Legal autonomy

The Contrôleur Général has the same legal framework as an ombudsman, meaning that the legal autonomy of the organisation lies with one person who subsequently has the monopoly on taking decisions. 'It's a pure autonomous institution, which means it does not fall under the merits of one or another ministry' (Launay-Rencki, 10-5-2012). Mr. Delarue (as legal personality) only has to comply to the parliament. The ministers have no power on him, no budgetary powers nor any powers to dismiss or to renew him. However instead of the ombudsman models in other countries the head of the French NPM is appointed not by an independent selection committee or by parliament but by the head of the Republic, making it a political appointment.

Interventional autonomy

The French NPM has full autonomy in setting the goals and norms of the organisation. There is no external control whether those goals are met. There are only some financial rules which are controlled by the audit department of the parliament. Because the organisation is not subjected to government interventions it does not receive sanctions and rewards in case of good or bad performance.

Conclusion

The French NPM scores sufficiently on each of the 6 dimensions of autonomy, except for the legal aspect. The main reason for this is that the legal autonomy lies within one person appointed by the head of the republic, who has all the powers on the managerial and policy areas. The French NPM is fully autonomous on all other aspects, meaning that in this thesis the level of autonomy is ranked as medium.

6.5.5 Effectiveness

Creating Public Value

Since the French government chose to establish a new organisation completely focussed on the implementation of OPCAT it received a budget solely for that goal. With a yearly allocated budget of over 4 million euro's the CGLPL is considered well equipped among other NPMs. From a public value perspective the French NPM has enough means to carry out the tasks set under OPCAT. Overall the whole field is being inspected regularly and frequently enough. Mainly because the France NPM has such a large budget the goals under OPCAT are met. 'Among the different NPMs I think the French NPM is considered as one which is well equipped from a financial point of view and staff point of view and legal point of view' (Launay-Rencki, 10-5-2012).

Building Operational Capacity

The French NPM have chosen their members according to OPCAT rules. Their employees seem to have the required capabilities and professional knowledge and are of a sufficiently diverse background to carry out its tasks as NPM (although heavy focus on employees with a legal background). There is a gender balance in the team, however the organisation does not represent an adequate representation of ethnic and minority groups in the country.

The Contrôleur Général does have the right legal framework and powers to carry out its tasks under OPCAT. But there are some reflections on that. At the moment their trying to increase the powers they have got. At the moment there is no access to medical records or to airplanes. This is up for internal discussion. Another big discussion point is that the French NPM does not have the scope, nor the means or competences to visit elderly homes. This is up for internal debate as well. In France there has just been a change of government, this could give a good opportunity to discuss those issues.

The Contrôleur Général has been established purely to fulfil the OPCAT needs but has also been designated the task to react to complaints from prisoners, making it not a purely pro-active organisation as requested by OPCAT.

Expanding Support and Authorisation

Although the organisation only exists for a couple of years respondents do feel that the organisation is sufficiently known in the field. Organisation recognition has been helped by the debate on the merging with the ombudsman. This gave a lot of publicity and helped bolstering the recognition in the field.

The French NPM focuses on building confidence with the organisation or establishment at place. 'We don't want to have a pure conflictual relationship' (Launay-Rencki, 10-5-2012). One of the guarantees for working in a cooperative way is that the organisation gets the opportunity to respond to the recommendations the Contrôleur Général makes before putting the report on the internet. However there is no room to modify the report after issuing. The full report with recommendations, the response of the organisation and the response of the ministry at charge is published all together on the website.

There are no other organisation already doing similar tasks nor do the inspected organisations complain of an inspection overload. There are however some overlapping topics, in which other inspection bodies could be involved but from a structural point of view there are no competing organisations in France.

Conclusion

One each of the three dimensions of effectiveness the goals of an NPM are met from an effectiveness point of view. There are some areas which need more attention, the French NPM should make it clear how broad they interpret OPCAT and most of all be careful not to lose sight the preventive mandate and spend too much of its resources on pro-active tasks like dealing with

individual complaints of detainees. Overall however the French NPM scores well on each of the three dimensions ranking it as a highly effective NPM.

6.5.6 Efficiency

In France there were some other organisations already carrying out some of the tasks of an NPM. Just after France ratified OPCAT there was a debate whether all the organisations which had tasks that could be linked to OPCAT should merge into one organisation. The CGLPL managed to resist that because they stated it would compromise their preventive approach as stated under OPCAT. The other three organisations did merge into the Defensor of Rights which sometimes does inquiries or handles individual complaints of detainees but more from a reactive approach. The French government seems to have made the right decision from efficiency point of view to appoint a new organisation, since there were no other organisations available to carry out the tasks under OPCAT. The level of efficiency is therefore determined as high.

6.5.7 Conclusion France

The Inspector General of places of deprivation of liberty (CGLPL) is the newly created organisation for the prevention of torture in France. As with other newly created organisations, France faced several challenges in the implementation of OPCAT. Many of the challenges during the creation of the CGLPL had to do with the (legal) place of the organisation within the field of prevention of torture. Eventually parliament emphasized the fact that the CGLPL was created with a focus on the preventive nature of OPCAT and should only carry out the tasks set under OPCAT.

Since the organisational model of the French NPM is based on the ombudsman model the CGLPL considers itself autonomous. With regards to managerial, policy, financial and interventional autonomy it most certainly is. However a side note needs to be made, the head of the inspection is directly appointed by the president of the Republic, making it a political appointment. His person is in full charge of running the organisation. This has been offset by making his 6 year term not renewable or his position revocable. However the fact is that the level of independency is determined for a great deal by the person of the Inspector General.

Concerning effectiveness the French NPM seems to be very well equipped from a financial point of view. They do however cope with some of the problems that arise when creating a new organisation. The CGLPL does not yet have all the powers they need to effectively carry out OPCAT nor does it yet have full name recognition within the field. Besides that the CGLPL also seem to have chosen a quite formal way of approaching the institutions, more towards the classical way of inspecting than the modern cooperative approach. Regardless those relatively small points the NPM seems to fit in with the OPCAT needs very well from a public value, operational capacity as expanding support and authorisation perspective.

To conclude, the French NPM seems to comply with OPCAT quite well with regards to effectiveness as well as with autonomy. The French NPM and its organisational model is brought forwards by other countries and the SPT as a good practice of OPCAT implementation (Evans, 2012; Amos, 2012). In this research the French NPM is ranked as follows:

French implementation mode	**Autonomy**	**Effectiveness**	**Efficiency**
New specialised body	Medium	High	High

6.6 Monitoring Places of Detention in Germany[18]

'In general we can say that the German detention situation is of a very high standard, but that doesn't mean that we don't need an organisation that looks at the treatment of people… at this time however the German NPM does not have enough (financial) means to effectively carry out the tasks set in OPCAT' (Hof, 4-6-2012).

6.6.1 Overview detention situation

Number of Prisons	186
Number of Police Cells	+- 2000
Approximate number of NPM units	2500 (additional 11.000 when counting elderly homes)
Approximate time to complete full inspection cycle	> 20 years
German NPM	The Federal Agency for the Prevention of Torture & The Joint Commission of the Länder for the Prevention of Torture
Type of NPM	New body (Independent external inspectorates)
Budget for the NPM tasks	300.000 Euros (200.000 from the Länder and 100.000 from the Federal government)

6.6.2 German NPM

The German NPM consists of two newly created organisations. First of all the Federal Agency for the Prevention of Torture, and secondly the Joint Commission of the Länder for the Prevention of Torture. Together they form the pillars of the German National Preventive Mechanism (Hof, 4-6-2012; Federal Agency for the Prevention of Torture, 2010).

The German NPM consists of a small team of 5 inspectors, called honorary members which are housed in different areas in Germany. The office for the whole NPM is based in Wiesbaden where a small team (4 FTE) supports the honorary members in conducting their research. In Germany most of the places of detention fall under the jurisdiction of the states (Länder), therefore the Commission of the Länder has more places to visit than the Federal Agency for the Prevention of Torture. As a result 4 honorary members look at places of detention that fall under the jurisdiction of the Commission of the Länder and 1 honorary member conducts his research under the jurisdiction of the Federal Agency (Hof, 4-6-2012; Federal Agency for the Prevention of Torture, 2010). The tasks of the German NPM is to visit places where people are deprived of their liberty under federal and the jurisdiction of the Länder, to draw attention to the problems and to make recommendations to the authorities for improvements.

The places that are visited by the German NPM include; prisons, police departments of the federation and the State, closed wings of psychiatric hospitals, detention centres for foreigners, closed places for juveniles and closed stations at hospitals and the care homes for elderly (both not visited yet) (Hof, 4-6-2012; Federal Agency for the Prevention of Torture, 2010; 10).

[18] All results are based on an interview with Mrs. Hof, and on documents published by the German NPM.

6.6.3 Appointment model

Germany signed the Optional Protocol on 20 September 2006 and transposed it into domestic law by the Federal Parliament on the 26th of August 2008 but it took until the 1st of May 2009 before OPCAT was put into action (Hof, 4-6-2012; Federal Agency for the Prevention of Torture, 2010).

The reason why it took so long was twofold; first of all, unlike other countries, Germany did not previously have organisations which could have taken on the role of the National Preventive Mechanism in line with other countries (Federal Agency for the Prevention of Torture, 2010; 9). There were some institutions which carried out similar tasks as the ones required under OPCAT but they did not had the powers nor the full mandate to guarantee a universal visiting system covering all places where people are deprived of their liberties. Consequently the decision was made that those tasks under the Optional Protocol which were under federal jurisdiction should be carried out by a Federal Agency and those under the jurisdiction of the Länder were to be inspected by a Länder Commission (Federal Agency for the Prevention of Torture, 2010; 9). This division was made because most of the places of detention in Germany fall under the jurisdiction of the States (Länder), example are; the prisons, most of the police cells and the psychiatric hospitals. So therefore the ministry put forth this proposal for discussions with the States (Hof, 4-6-2012).

The second reason why implementation was stalled had to do with the required state treaty. Because Germany is a federal State the proposal to have two separate organisations, one responsible for the federal jurisdiction and the other for the jurisdiction of the Länder, had to be discussed separately in all the 16 states. The discussion in the state parliaments focussed mostly on costs and organisational model. In accordance with article 24 of OPCAT the assignment of an NPM was postponed until the state treaty was signed by all the different Länder.

The first step in the actual implementation process of OPCAT was the creation of the Federal Agency on the 1st of May 2009 and the second step was when on the 1st of September in 2010 the Commission for the Länder came in to power. For the appointment process the federal ministry of Justice came with a proposal for a monitory body with experts who work on an honorary basis. They proposed to appoint one representative for the places on the jurisdiction of the federation and several commissioners for the places under jurisdiction for the Länder. This was done because most of the places of detention in Germany fall under the jurisdiction of the States (Länder), for example the prisons, most of the police cells and the psychiatric hospitals. So therefore the ministry put forth this proposal for discussions with the States. The ministry of Justice itself had more of an administrative, coordinating task. An internal working group was created with representatives of the States and the Federal government. NGOs, civil groups and scientific institutions were excluded in this process of NPM creation. 'The process could have been more transparent and participative' (Hof, 4-6-2012). The problem was that the States had some reservations about the costs of the NPM and the creation of a completely new institution for the bureaucracy. The original idea was to work with 16 honorary members for the Commission of Länder (one for every state) but this number was reduced after the discussion with the states to only 4 honorary members.

Conclusion

In Germany there were no organisations already carrying out all the tasks asked for under OPCAT, therefore the government decided to create a new NPM. The German NPM consists of two newly created organisations. First of all the Federal Agency for the Prevention of Torture, and secondly the Joint Commission of the Länder for the Prevention of Torture. Together they form the pillars of the German National Preventive Mechanism. This dual organisation arrangements stems from the fact that Germany is a federal state and therefore has one organisation at the national level looking at the prevention of torture and one organisation inspecting the places which fall under the jurisdiction of the Länder.

6.6.4 Autonomy

Managerial autonomy

The German NPM has managerial autonomy concerning the appointment of full time staff members. Honorary members however are nominated during a consultation process between different ministries. This could happen through a proposition by members of parliament but they are in the end appointed by ministries. 'This process could be more transparent in the future' (Hof, 4-6-2012).

Policy autonomy

The German NPM has full autonomy in deciding which places to visit and which policy instruments to use for those visits.

Structural autonomy

The German NPM is completely free to choose its employees according to OPCAT rules and it does not have to take employees firstly from ministries.

Financial autonomy

The German NPM is completely dependent on public funding. The level of funding is partly determined by the federal government (1/3) and partly by the Länder (2/3). The German NPM has limited possibilities concerning financial management. The whole German NPM budget is fixed and there are no possibilities to change that and only limited areas where the organisation is free to spend it according its own insights. 'We have little possibilities to make our own decisions budget wise and the budget is also very small, only 300.000 euro's a year. We are asking for more money. But it will be decided by the ministry this June. And I don't think we will get more' (Christina Hof, 2012). The federation pays 100.000 and the states (Länder) pay the additional 200.000.

Legal autonomy

The German NPM has its own legal personality which makes it completely independent and not subjected to the hierarchy of any of the ministries. Since the German NPM consists of two parts with at the Federal level only one honorary member it just happens to be only one person. But in the future when more members are appointed, the organisation as a whole will still have its own legal personality.

Interventional autonomy

The German NPM has full autonomy in setting the goals and norms for the organisation. There is no external control whether those goals are met. However since the organisation is still quite new there is no guarantee this might not happen in the (nearby) future. But until now the performance has not been measured and is therefore not subjected to rewards or sanctions in case of good or bad performance.

Conclusion

The German NPM system scores insufficiently on managerial and financial autonomy. Managerial the organisations is insufficiently autonomous because the appointment process of the honorary members (the inspectors) is vague and not transparent, financially the German NPM has a very low budget with little room for discretionary spending. On the other four terrains of autonomy the German NPM passes the requirements of OPCAT rating the German NPM as medium on level of autonomy.

6.6.5 Effectiveness

Creating Public Value

The German NPM does not have the necessary means to carry out the tasks set under OPCAT. With a yearly budget of 300.000 euro the German NPM seems underfunded in comparison to other countries. The German NPM would need a lot more additional honorary members to do the visits and also more full-time staff to accompany the visits. In their annual report the NPMs made a comparison between other countries and pointed out that they did not have enough money to carry out the tasks set in OPCAT effectively. At a conference of all the ministries of Justice of the Länder in June this will be discussed. But a negative response is being anticipated.

Building Operation Capacity

In general the German NPM is able to choose its own members according to OPCAT. However improvement is possible. Because of the lack of staff and money it is not possible to choose between 20 different people and create a very diverse and multidisciplinary team. There is a lack of expertise in some areas, for example none of the honorary members is either a doctor or a psychiatrist. The organisation is free to hire in externals but does not have the budget to bring an external person on every visit.

With so few members the NPM is not an adequate representation of ethnic and minority groups in the country. There is a gender balance in the team though.

The organisation does have the right legal powers to carry out its tasks under OPCAT, the honorary member are for example allowed to look into medical records.

The German NPM has been established purely to fulfil the tasks under OPCAT.

Expanding Support and Authorisation

The German NPM still more or less has to introduce itself. But normally the head of the organisation knows about the NPM and most of the detainees as well. The organisation gets a lot of letters and phone calls from people in institutions the NPM has never been, from states they have never been to. That the detainees know the institution might be because of the second annual report and by word of mouth. What also helps is that there is not an ombudsman in Germany like in other countries. There are a lot of organisations detainees could contact in case of mistreatment but there is not one central point. The NPM has become one of the organisations detainees contact.

The customers see our visits partly as a burden and partly as helpful. Some of the recommendations requires structural reform or costs a lot of money and sometimes the report is very critical. We try to make structural changes and therefore cooperate as much as possible with the institutions. 'We are not against them' (Hof, 4-6-2012). Written reports are send to the institutions but are not made public. The main reason for this is that there are a lot of sensitive issues about security details in the reports. It is a deliberate choice of the NPM (and not the institutions or ministry) to only discuss the outcome with the organisations and the ministries. The only things which are being published are the recommendations and the reactions of the institutions in the NPM annual report.

There are no other organisations performing similar tasks as the NPM. There are some organisations who do part of the NPM tasks. 'But no other organisation is Germany can visit all of those places, do it unannounced, can look at all the records and do this on a federal and state level' (Hof, 4-6-2012).

Conclusion

The German NPM scores insufficiently on both creating public value and building operational capacity. Most of their problems stem from a severe lack of budget; especially the fact that they are not expected to complete a full inspection cycle within 20 years is worrisome. On expanding support and authorisation the NPM seems to manage relatively well, however the choice to not publicly publish the inspection reports, although not required under OPCAT, makes it the exception

in Western-Europe. Since two out of the three dimensions are rated insufficient the level of effectiveness is rated as low.

6.6.6 Efficiency

In Germany not many organisations were yet concerned with the prevention of torture before the ratification of OPCAT and 'most of them covered only a few very specific areas and they did not do the independent monitoring work like the NPM does now in Germany' (Hof, 4-6-2012). During the implementation face the German government did not gave a complete list of all the places of detention. 'The federation send us a complete list; the problem lied more with the states. They send us lists just with information about part of the institution or places to visit. So we still have no complete overview over all this places' (Hof, 4-6-2012). So in total it probably was a logical choice to appoint two new organisations. However some of the problems from an efficiency point of view stems from the difficulty of having to deal with all the Länder. Taking decisions, allocating money and therefore effective inspections have been obstructed mainly because of the difficult federal structure of Germany.

Although it was probably the right option for Germany to appoint new organisations as NPM it was very poorly executed therefore the level of efficiency is rated low.

6.6.6 Conclusion Germany

In Germany there were no organisations already carrying out all the tasks asked for under OPCAT, therefore the government decided to create a new NPM. The German NPM consists of two newly created organisations. First of all the Federal Agency for the Prevention of Torture, and secondly the Joint Commission of the Länder for the Prevention of Torture. Together they form the pillars of the German National Preventive Mechanism.

Considering managerial autonomy the German NPM lacks from an autonomy perspective. Not only are the inspecting honorary members appointed by ministries this also happens in a process which is not as transparent as can be. More serious however are the budget constrains the German NPM have to deal with. A lot of the NPM budget is fixed meaning that the organisation does not have much room to decide where to spend its money on. With respect to the other areas of autonomy the German NPM score much better, they are free to choose their own members and also have full autonomy in deciding which places to visit and which policy instruments to use for that. Therefore the level of autonomy is rated as medium.

The main problem that arises from an effectiveness point of view is that the German NPM lacks financial resources. The NPM itself feel that they do not receive enough budget to effectively carry out its tasks under OPCAT (Hof, 4-6-2012). Especially the fact that they are not expected to complete a full inspection cycle within 20 years is worrisome. Although they already pointed this out to the government it is unlikely that this underfunding will be resolved in the short term. From an organisational capacity perspective the organisation is seen as more or less effective. It is free to choose its own members but again due to the lack in funding is unable to hire the required (external) personnel to have the required expertise. Being a new organisation also brings problems with the expanding of support and authorisation. The NPM is not yet very well known in the field and the written reports are not being published publicly as recommended by OPCAT. To end with a positive note there are no other organisations performing similar tasks as the NPM is doing at the moment. Overall from an effectiveness perspective the NPM is rated low.

To conclude the German NPM is at the moment not compliant with OPCAT. But this could be easily fixed when additional resources are allocated to the NPM body. For now the score for the German NPM is visualised below:

German implementation mode	**Autonomy**	**Effectiveness**	**Efficiency**
New specialised bodies	Medium	Low	Low

7. Analysis

In the previous chapter the implementation mode of the Netherlands, The United Kingdom, Sweden, Spain, France and Germany and the effects on the level of autonomy, effectiveness and efficiency have been explained separately. In order to compare the different modes of implementation and explain the differences and similarities between each mode of implementation they will be discussed together in this chapter. This will help answer the final two empirical research questions; *how does the difference between the different implementation modes affect the national implementation of OPCAT? How do the parameters (autonomy, efficiency and effectiveness) affect the National Preventive Mechanisms?*

The questions are answered by looking at the combined results of each mode of implementation. In chapter 7.1 the Netherlands and the UK who both implemented multiple bodies as their NPM are discussed. Section 7.2 discusses the existing bodies, or Ombudsman mode of implementation, by looking at the results for Sweden and Spain. The third paragraph, 7.3 looks at the countries France and Germany who opted to create a complete new organisation.

7.1 Multiple bodies mode of implementation

The Netherlands and the UK both opted to appoint multiple bodies as their NPM. Both countries faced several challenges during the implementation phase. Many of those challenges were related to the structure – notably size and complexity – of the existing system in place for monitoring places of detention. In both countries monitoring detention and torture prevention was scattered across a whole range of different organisations, with different (historical) backgrounds, legal personalities, links with the government, working practices and range of expertise. It is therefore that forging one system which fitted the requirements under OPCAT proved difficult.

According to the head of the SPT, Malcolm Evans, the appointment of multiple organisations was a logical choice for both the UK and the Netherlands since both countries already had a complex and broad inspection system in place: 'Entirely appropriate that in the UK they shouldn't think of a new model but should build on the existing patchwork to patch a patchwork' (Evans, 31-05-2012).

It is therefore no surprise that within the Netherlands and the UK many of the challenges for successful preventive monitoring under UN law stems from the complexity of the multiple bodies system. According to OPCAT both the Dutch and the UK NPM system do not comply with the autonomy requirement under the UN protocol. The main reason for this is that some of the leading organisations appointed NPM are too closely linked to their respective ministries, leaving them from a managerial, financial, structural bust most of all legal perspective too much depended on their governments. A side node must be made though, although both countries on paper do not comply with the required level of independence they both assess that their close link with the ministries does not compromise the order of inspected places nor their working methods or policy instruments used during inspections.

With regard to effectiveness both the UK and the Netherlands are more than sufficiently equipped to carry out the tasks under OPCAT. The multiple bodied system delivers a high amount of public value for each country. After fixing some white spots with regard to professional monitoring of police and court cells, both countries are able to meet the goals of an NPM: having the capacity and expertise to regularly carry out inspections on places of detention and make recommendations for improving the treatment of prisoners. Because of the multiplicity of the system almost all the places of detention (with the exception of the earlier named white spots) are visited regularly by many inspection bodies with different backgrounds. The advantage for example of adding independent monitoring boards as part of the NPM is that those civil inspector bodies are capable of doing much more inspections (up to multiple times a month for prisons) than official inspectorates are capable of doing. From an expanding support and authorisation perspective the multiple NPM has a large advantage that it has so many different bodies with a rich history. Therefore they are already known in the field and specialised on their specific terrain.

The Dutch and UK government made a good decision from an efficiency point of view to not create a new organisation. Most of the NPM tasks were already carried out in the UK and the Netherlands

and therefore few additional funds were necessary for the countries to comply with OPCAT. The problem seems not to be a lack, but a surplus of organisations capable of carrying out NPM tasks. In the UK a lot of efficiency was created by appointing a staff member of the Her Majesty's Inspectorate of Prisons responsible for the coordination between the different NPM members. The Netherlands could achieve a higher level of efficiency by putting more effort in coordination and working together more closely.

Conclusion

The following table represents the combined results of the Netherlands and the UK, and shows the level of autonomy, effectiveness and efficiency achieved by their NPMs:

Multiple existing bodies	**Autonomy**	**Effectiveness**	**Efficiency**
The Netherlands	Low	High	Medium
The United Kingdom	Low	High	High
Combined	**Low**	**High**	**Medium/High**

The most important conclusion that can be drawn from the table above is that the multiple existing bodies mode of implementation has a high chance of not reaching the standards of autonomy asked for by international law. Since most places of detention are visited very regularly and professionally by many different organisations with different expertise they are very effective in reaching the goals under OPCAT. There seems to be a tradeoff between autonomy and effectiveness; appointing one single organisation with the right credentials might increase the autonomy of the monitoring of detention system, but would probably harm the effectiveness since it is hard to cover all the places of detention with one single body without compromising on expertise. Efficiency seems to be for a large part determined by the national context of the countries. In a country with already has multiple organisations available the most efficient option for the government is to opt for the multiple bodies mode. Efficiency can be further enhanced by improving the coordination between the different NPM members to make sure no double work is being done.

The conclusion for the multiple bodies mode of implementation is perhaps best summarized by Malcolm Evans;

'Ideally what you are looking for is something which combines autonomy and effectiveness. But despite what people say these often cut against each other, particular where you already got a series of shall we say mechanism which are working effectively which have grown up in an era which is perhaps not as much autonomy driven but more effectiveness driven' (Evans, 31-5-2012).

7.2 Existing bodies (ombudsman)

Spain and Sweden both appointed an Ombudsman (in Sweden also the Chancellor of Justice) as NPM. However the implementation process was completely different in each country. The appointment process in Spain took a long time because Spain had a deliberate political debate about the implementation of OPCAT. In the end the Ombudsman was appointed because it already had experience in carrying out inspections, it possessed the right powers and legal framework and it did not need much additional funds in order to function successfully as NPM. In Sweden there was no political debate about OPCAT, both organisations were appointed without even consulting with them. Both organisations did not want to become an NPM. The Swedish government however felt that with those two organisations they already had organisations that lived up to the expectations of OPCAT. The whole implementation process was not cooperative because the Swedish government chose to appoint both organisations anyway.

Both ombudsman have a very high level of autonomy.

On each of the three dimensions of effectiveness the Spanish NPM has some problems. If they would receive a larger budget they would have been more successful at creating public value. All the prerequisites for doing independent and preventive inspections are in place. They are successful at building operational capacity. The biggest problem for Spain seems to be from the expanding support and authorisation perspective; in some parts of the country parliament prefer the regional ombudsman to carry out the NPM tasks. The overall assessment of the Spanish NPM is that they score medium on effectiveness. Sweden has the same problems. They also feel they could do a more effective job in case they received more budget, they also have been successful in building operational capacity and the main problem from an effectiveness point of view is also expanding support and authorisation. The main problem in Sweden lies with the relation between the ombudsmen and the NPM unit, this difficult relationship makes it hard to come across effective in the field. Both countries are insufficient on that point and are therefore rated medium on effectiveness.

From an efficiency point of view the Spanish gave the right example by starting a political debate in the country. Unfortunately they did not give that debate a follow up which led to internal discussions between different Spanish regions. The government could have increased the efficiency of the NPM system by including the regional ombudsman in the NPM system. Therefore the level of efficiency of Spain is rated as medium. In Sweden both organisations rejected (or tried to reject) the appointment as NPM. Part of the reason for that is there was no public debate and therefore it did not became clear if there were any other organisations more suited or more willing to take on this role. The government could have prevented the resentment under the NPM members therefore the level of efficiency is rated as low.

Conclusion

The following table represents the combined results of the Sweden and Spain, and shows the level of autonomy, effectiveness and efficiency achieved by their NPMs:

Existing bodies (ombudsman)	**Autonomy**	**Effectiveness**	**Efficiency**
Sweden	High	Medium	Low
Spain	High	Medium	Medium
Combined	**High**	**Medium**	**Low/Medium**

The most important conclusion that can be drawn from the table above is that both countries score very similar results, more similar than you would expect from countries so wide apart, both in geographical as in political terms. The reason why both countries score almost the same is because they both face the same problems with the ombudsman's model. However the difference in efficiency lies in the fact that the Spanish ombudsman was willing to take on the role as NPM because they were involved in the designation process. In Sweden however there was a lot of resentment towards taking the role of NPM, because it was not discussed with them. An import conclusion is that it is very important that during the appointment face the organisations are involved in the process.

7.3 New specialised bodies

Germany and France both created new organisations in order to fulfil the obligations under OPCAT. In France and Germany there were few organisations already carrying out preventive inspections, therefore they both created a new organisation to carry out the OPCAT tasks. Malcolm Evans says about this; 'a centralized new model system fitted in with how they tend to deal with issues' (Evans, 31-5-2012).

The French and German mode of implementation is the same but the effect on the effectiveness and efficiency of the NPM system is different. Most of this differentiation is explainable from the difference in budget. The French NPM has a yearly budget of over 4 million, whilst the German

counterpart only has about 300.000 euro's to spend each year. Most of the differences between the countries are explainable from this remarkable difference in funding.

Both the French and the German NPM attain a medium score from an autonomy perspective. In France the main reason for this is that the head of the inspection is directly appointed by the president of the Republic, making it a political appointment. This is extremely relevant as the French NPM has the same legal basis as an Ombudsman, meaning that the head of the organisation is also the legal personality and therefore in charge of running the whole organisation. However this does not necessarily have to mean that it falls short in terms of autonomy: 'there are many instances in which some of the most fiercely independent institutions are those which were born out of political processes. Partly because they have proven their independence' (Evans, 31-5-2012). In Germany there is a different problem from an autonomy perspective, although the NPM itself has its own legal personality as an organisation the actual inspectors are not appointed by the organisations themselves but by ministries in a not very transparent process.

In Germany the main problem that arises from an effectiveness point of view is that the German NPM lacks financial resources. The NPM itself feel that they do not receive enough budget to effectively carry out its tasks under OPCAT (Hof, 4-6-2012). As a result the German NPM scores low on effectiveness. Although it is free to choose its own members, due to the lack in funding is unable to hire the required (external) personnel to have the required expertise and most importantly it is unable to complete a full cycle of inspections within 20 years. Concerning effectiveness the French NPM seems to be very well equipped from a financial point of view and is therefore able to do a complete cycle in an acceptable timeframe and have a diverse and qualified team to do the inspections. Although some minor concerns the French NPM can be considered highly effective.

The French NPM and its organisational model is brought forwards by other countries and the SPT as a good practice of OPCAT implementation, whilst the German NPM is one of the examples where a lot of improvement can be made (Evans, 31-5-2012).

Conclusion

The following table represents the combined results of Germany and France, and shows the level of autonomy, effectiveness and efficiency achieved by their NPMs:

New specialised body	**Autonomy**	**Effectiveness**	**Efficiency**
Germany	Medium	Low	Low
France	Medium	High	High
Combined	**Medium**	**Medium**	**Medium**

The most important conclusion that can be drawn from the table above is that creating a new organisation does not automatically means the targets set under OPCAT were met. The differences in scores between Germany and France are almost completely explainable by the difference in budget. In France the organisation says: 'we don't have any resourcing issues. We may have other problems but that's not one of them (Delbos, 1-6-2012). The conclusion is that when creating a new organisation to carry out international law the amount of resources allocated are the main determent for effectiveness and efficiency.

8. Conclusions and recommendations

In this chapter an answer is given to the central question on the basis of empirical and theoretical research; *what is the effect of the chosen implementation mode on the autonomy, effectiveness and efficiency of the National Preventive Mechanisms implemented under OPCAT?*

On the 18th of December 2002 the United Nations adopted the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. From a human rights perspective this meant increased international attention for people deprived of their liberty. People who are detained are out of sight, low priority and unpopular and therefore at particular risk of inhumane or degrading treatment. The Brandon case in the Netherlands, described in the first chapter, is just an example that shows that mistreatment of detainees happens all around the globe. The OPCAT protocol serves as a reminder that prisoners anywhere in the world should be treated with respect, but it also requires states to takes active measures in the prevention of torture. The central premise of OPCAT is that places of detention should be examined regularly in order to prevent mistreatment and that this should happen through inspectorates which are independent of the organisations that locks up the detainees.

8.1 Modes of implementation

The basic foundation of OPCAT lies in the triangular relation between the international Subcommittee for the Prevention of Torture (SPT), the Nation States and the National Preventive Mechanisms. The latter being the unique component in the OPCAT treaty; additional to an international organisation (the SPT) carrying out inspections in the countries which ratified OPCAT the treaty requires countries to implement their own organisations to carry out the required tasks under international law. Each country which ratifies OPCAT therefore has to appoint or create its own National Preventive Mechanism (NPM). The UN law leaves room for individual interpretation on how to implement the NPM. Hope was that this clause in the law will ensure that each home-grown body flourished in its own setting whilst holding true to the core principles in OPCAT.

In practice this led to the implementation of three different organisational modes. The first is the multiple bodies mode, or the gathered or umbrella model. The second mode is called the existing body or ombudsman model and the final mode is the newly created body. In this research out of each category two countries are researched to be able to compare the effect of using different implementing modes. The United Kingdom and the Netherlands already had a rich range of different organisation concerned with the monitoring of places of detention; both countries therefore opted to implement the multiple bodies model. Sweden and Spain both had a traditionally strong Ombudsman and therefore appointed a long existing organisation as their NPM. In France and Germany there were few organisations already carrying out preventive inspections, therefore they both created a new organisation to carry out the OPCAT tasks.

When comparing the different modes of implementation the main conclusion is that not every mode is suitable for each country. In countries which already have well respected institutions creating a new organisation will cause trouble. There is not one magic bullet. Which mode fits best should be looked at from a country to country basis, it depends on the culture, the laws and the organisations in place.

8.2 Autonomy, effectiveness and efficiency

In order to compare the effect of the different implementation modes three critical organisational parameters, or factors, which are deemed essential for a successful execution of OPCAT are discerned. Autonomy, effectiveness and efficiency were chosen because they are all essential organisational aspects for the creation of a successful National Preventive Mechanism. Autonomy is described as the level of decision making competences of the organisation and the exemption of constraints on the actual use of those decision making competencies. In other words the distance between the organisation and the government. Effectiveness is looked at from a multiple-

constituency approach, meaning from different perspectives, is the NPM able to create public value, does it have enough operational capacity and is it able to expand its support and authorisation. Efficiency is about whether the requirements of OPCAT are met whilst dedicating the least amount of (additional) funds and powers possible.

8.3 Conclusion

At the end of the theoretical chapter the following hypothesis was formulated: there is expected to be a relation between the different modes of implementation and the autonomy, effectiveness and efficiency of the bodies appointed. The expected outcome formulated from the theory is not much different than was found in the empirical research. For each mode of implementation their influence on the autonomy, effectiveness and efficiency on the monitoring system is shown in the table underneath:

Implementation Mode	**Autonomy**	**Effectiveness**	**Efficiency**
Multiple existing bodies	Low	High	Medium/High
Existing bodies (ombudsman)	High	Medium	Low/Medium
New specialised body	Medium	Medium	Medium

The main conclusion that can be drawn from this table is that each mode of implementation has its own strengths and weaknesses. Countries who adopted the gathered model have an NPM system which consists of organisation which were created with a more functional independence idea in mind. Close connection with ministries and places of detention were already in place and used in order to gain quick access to resources and needed powers compromising their level of autonomy. However their strength lies in the multiplicity of the NPM. The countries who adopted this mode were highly effective in creating public value because the places of detention were monitored regularly and with a lot of expertise.

The weakness of the ombudsmen's model is that historically most ombudsmen started as a complain institution. Preventive inspections require a completely different approach than the handling of individual complaints. 'In order to effectively and efficiently carry out OPCAT you do need links with the institutions and governments. If you are looking to build effectiveness you somehow have to create links with the government. It is easy to see that in countries where those links are missing they are less effective in monitoring places of detention' (Evans, 31-5-2012). The strength of the ombudsman's model lies in the fact that they are completely independent from the government and fall directly under parliament and are therefore not subjected to interference from the ministries.

To end with the new specialised bodies, they seem to score average over all the parameters. However there were a lot of difference between the researched countries. The conclusion is that when creating a new organisation to carry out international law the amount of resources allocated are the main determent for effectiveness and efficiency.

After assessing all modes of implementation separately it is fair to conclude that there seems to be a trade off between autonomy, effectiveness and efficiency. The tension between autonomy and effectiveness can be summarized in one question; what do you prioritize, formal substance or complete autonomy? From an efficiency point of view it essentially comes all down to resources. With unlimited funds each of the implementation modes can bring forth a successful NPM system. However as Malcolm Evans states: 'it is almost implicit that it may be that NPMs are not necessarily OPCAT compliant. Our role (the SPT) is to work with what the States have produced, to advice about that' (Evans, 31-5-2012). In other words even if the system implemented is not (yet) compliant with OPCAT it is not too late. Bringing international ideals into national practice is a work in progress.

8.3 Recommendations

After the previous conclusions there are three main recommendations which I deem essential in the success of NPMs and OPCAT. These recommendations are not so much done from scientific pretentions, but are based on the interviews conducted for this research, the studied literature and discussions on OPCAT and NPMs with national and international actors within the field of torture prevention.

Recommendation 1: One size does not fit all

According to OPCAT each country should assign one or multiple NPMs within a year after ratifying the agreement. In practice all the countries researched were all delayed in the appointment of NPMs. Therefore the first recommendation for states still in the process of ratification is to make an assessment of the situation of detention monitoring in their country before ratifying OPCAT. This is best done by making a clear list of all the places of detention, all the organisations already carrying out monitoring tasks and an assessment of all the additional powers and resources needed in order to comply with the requirements under OPCAT.

Recommendation 2: Be aware that each mode has its own weaknesses

The second recommendation corresponds very closely with the conclusion. Each country must be aware of the fact that each implementation mode they choose or have chosen contains flaws. Even after implementation of the NPM it is important to work on, and take into account, the weaknesses in each model. For example the countries who adopted the gathered model should be aware that it is important to keep a fair distance from the ministries to make sure they operate completely independent from the people managing the places of detention. The weakness of the ombudsmen's model is that historically most ombudsmen started as a complain institution. Preventive inspection requires a completely different approach than the handling of individual complaints. In order to effectively and efficiently carry out OPCAT they do need links with the institutions and governments. A completely independent stance is not always the best from an effectiveness point of view. 'Whilst that will certainly work in case of individual remedies and decisions in particular cases it doesn't work so well in an NPM context when it is all about systemic contact and influence' (Evans, 31-5-2012). Lastly a complete new organisation could work well as long as its sufficiently funded and as long as it's able to build operational capacity and expand its support and authorisation.

Recommendation 3: The added value of NPMs lies for a big part in (inter)national cooperation

Without underestimating the huge value of the actual inspection work done by the SPT and the NPMs it is fair to say that a big part of the value of NPMs lies in the networks that have been established due to OPCAT. Not only on the national level has OPCAT brought organisations together with similar objectives, in international perspective OPCAT has become a real game changer. 'It is not only a game changer in case of shall we say visiting places of detention it is also a game changer in understanding how you actually implement international human rights obligations' Almost directly after OPCAT came into effect in 2006 informal NPM networks have started to sprout. This international cooperation between different national NPMs have proven to be surprisingly effective and important. The recommendation for countries which ratified OPCAT is to actively participate in the exchange of practices between countries. Because what OPCAT ultimately proved is that actual change in the situation of detainees are not made by issuing international dictates but by international mechanisms cooperating with domestic organs in order to bring real change in people life.

I. Interviews and meetings

Overview of meetings:

- 2-2-2012, meeting with the head of the IOOV (Gertjan Bos) about the implications of the OPCAT agreement for the soon to be Inspection of Security and Justice (I V&J).
- 7-2-2012, meeting with the Dutch NPMs and 'participants'. Nanne Haspels (CITT), Jan Wilzing (CITT), Irving Levie (IJZ), Maril Gelauff (JSR), Arnout Brussaard (Min V&J), Monique van der Vlugt (Ombudsman), Achmed Baaijens (CvT sanctietoepassing), Femke Hofstee – van der Meulen (ISt), Martijn Tummers (ISt), Schippers (IGZ), Wim Huisman (CvT politiecellen) en Andrea Steenbrink.
- 29-5-2012, meeting with the Dutch NPMs and 'participants'. Jan Wilzing (CITT), Irving Levie (IJZ), Maril Gelauff (JSR), Achmed Baaijens (CvT sanctietoepassing), Femke Hofstee – van der Meulen (ISt) and Monique Schippers (IGZ).
- 31-5-2012, meeting with European NPM members, Sven-Ake Jansson (Sweden), Laura Paton and Hindpal Singh Bhui (UK), Vincent Delbos (France), judge Michael Reilly (Ireland), Femke Hofstee and Martijn Tummers (Netherlands).
- 1-6-2012, International Conference on the synergy between the SPT, CPT and NPMs. Speakers include; prof. Malcolm Evans (SPT), Gertjan Bos (IV&J), prof. Anton van Kalmthout (CPT), prof. Martin Kuijer (CPT), Peter van der Sande (ICPA & Europris), Oliver Tell (European Commission) and judge Michael Reilly (Inspector of Prisons Ireland).

List of interviews:

Land	**Name Organisation**	**Respondent**
France	General Inspector of Places of Deprivation of Liberty	Vincent Delbos Elise Launay-Rencki
Germany	Federal Agency for the Prevention of Torture and Joint Commission of the Lander	Christina Hof
Netherlands	Inspectorate for the Implementation of Sanctions (ISt) Ministry of Security and Justice	Femke Hofstee Jacob Struyker Boudier Martijn Tummers
Spain	Ombudsman	Esther Pino Gamero
Sweden	Parliamentary Ombudsman and the Chancellor of Justice	Sven-Ake Jansson Hakan Rustand
United Kingdom	Eighteen organisations, including the HM Inspectorate for Prisons	Hindpal Singh Bhui Laura Paton
NVT	SPT	Malcolm Evans

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III. List of abbreviations

APT	Association for the Prevention of Torture
CAT	UN Committee against Torture
CGLPL	Controleur Général des Lieux de privation de Liberté
CITT	Commission for Integral Monitoring Return (Commissie Integraal Toezicht Terugkeer
CPT	(European) Committee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
ECPT	European Convention for the Prevention of Torture
IOOV	The Public Order and Safety Inspectorate (Inspectie Openbare Orde en Veiligheid)
IGZ	(Dutch) The Health Care Inspectorate (Inspectie voor de Gezondheidszorg)
IJZ	(Dutch) Inspectorate for Youth Care (Inspectie Jeugdzorg)
ISt	(Dutch) The Inspectorate for the Implementation of Sanctions (Inspectie voor de Sanctietoepassing)
HIMP	Her Majesty's Inspectorate of Prisons
NGO	Non-Governmental Organisation
NHRC	National Human Rights Commission
NHRI	National Human Rights Institution
NPM	National Preventive Mechanism
OPCAT	Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment
RSJ	(Dutch) Council for the Administration of Criminal Justice and Protection of Juveniles (Raad voor de Strafrechtstoepassing en jeugbescherming)
SPT	(UN) Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCAT	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

IV. Questionnaire

Implementation Mode

- Who led the appointment process and what was the timeframe?
- Which organisations where appointed NPM? Why where they selected?
- Where the organisations chosen to become NPM involved in the appointment process? If not, why not?
- Where there other organisations in consideration of being appointed NPM?
- Do the NPM requirements match the other tasks of the appointed organisation(s)?
- Was it a logical choice to appoint those organisation(s)?
- Do you think the right organisation(s) are appointed NPM?

Autonomy

- Can the organisation itself take decisions concerning HRM (who to appoint, etc.)?
- Can the organisation itself take decisions concerning financial management?
- Can the organisation itself determine which places of detention to visit?
- Can the organisation choose its own policy instruments used for inspections?
- What is the composition of the organisation, and is the organisation free to choose its members according to OPCAT rules?
- Where does the organisation receive its income from? And what is the level government dependency on this point?
- Does the organisation has its own legal personality to fulfil its tasks under OPCAT? If yes what kind of type of legal personality (directly under the ministry etc.)?
- Can the organisation set its own goals and norms?
- Does the performance of the organisation get measured? If yes, has the organisation influence on the indicators used for measuring?
- Is the organisation also evaluated by the government? If yes is it subject to rewards and sanctions in case of good or bad performance?
- Overall, do you value the organisation of sufficiently autonomous?

Effectiveness

- Does the organisation has enough financial means to carry out the tasks set in OPCAT?
- Did it get additional funds when appointed NPM?
- Is the organisation free to choose its member according to OPCAT rules?
- Do the employees have the required capabilities and professional knowledge?
- Does the organisation have the right gender balance and are an adequate representation of ethnic and minority groups in the country?
- Does the organisation has the right legal framework (powers) to carry out its tasks?
- Is the organisation known in the field?
- Do the practices of the organisation fit in with the customer's needs?
- Are there any other organisations performing similar tasks? Do they complain of an inspection overload?
- Do you think that you have enough capacity (as well in funding as legal framework) to effectively carry out the tasks under OPCAT? If not, did the organisation communicate this with the government?

Efficiency

- Which tasks of OPCAT are new to the appointed NPM(s)?
- Which of the tasks were already done?
- Where the organisations (before OPCAT) allowed to (unannounced) visit places of detention?
- Where there any white spots, places nobody was inspecting?
- Are the NPM(s) cooperating with other organisations to fulfil OPCAT?
- How many places of detention are under the supervision of the NPM?
- Is there a complete overview of all the places of detention by your government?
- What is the range of places of detention that are being visited?
- How often do those places gets visited?
- Are there any organisations who do not meet the OPCAT requirements but are still appointed NPM? If yes, why so?
- Are there organisations who did meet the OPCAT requirements but where not appointed NPM? If so, why?
- Overall, do you think it would have been more efficient to implement another implementation model?

V. Text OPCAT

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199.

Entered into force on 22 June 2006

PREAMBLE

The States Parties to the present Protocol,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights,

Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures,

Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention, Have agreed as follows:

PART I

General principles

Article 1

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Article 2

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.

2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.

3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.

4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

Article 3

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

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.

PART II

Subcommittee on Prevention

Article 5

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.

2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.

3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.

4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.

5. No two members of the Subcommittee on Prevention may be nationals of the same State.

6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

Article 6

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.

2.

(a) The nominees shall have the nationality of a State Party to the present Protocol;

(b) At least one of the two candidates shall have the nationality of the nominating State Party;

(c) No more than two nationals of a State Party shall be nominated;

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.

3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

Article 7

1. The members of the Subcommittee on Prevention shall be elected in the following manner:

(a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;

(b) The initial election shall be held no later than six months after the entry into force of the present Protocol;

(c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;

(d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:

(a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;

(b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;

(c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

Article 8

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be

eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 (d).

Article 10

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.

2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:

(a) Half the members plus one shall constitute a quorum;

(b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;

(c) The Subcommittee on Prevention shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

PART III

Mandate of the Subcommittee on Prevention

Article 11

1. The Subcommittee on Prevention shall:

(a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(b) In regard to the national preventive mechanisms:

(i) Advise and assist States Parties, when necessary, in their establishment;

(ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;

(iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

(c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organisations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

Article 12

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake:

(a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of

detention as defined in article 4 of the present Protocol;

(b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;

(d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

Article 13

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.

2. After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.

3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.

4. If the Subcommittee on Prevention considers it appropriate, it may propose a short follow-up visit after a regular visit.

Article 14

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:

(a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;

(e) The liberty to choose the places it wants to visit and the persons it wants to interview.

2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

Article 15

No authority or official shall order, apply, permit or tolerate any sanction against any person or organisation for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organisation shall be otherwise prejudiced in

any way.

Article 16

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.

2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.

3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.

4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

PART IV

National preventive mechanisms

Article 17

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

Article 18

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.

2. The States Parties shall take the necessary measures to ens ure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.

3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

Article 19

The national preventive mechanisms shall be granted at a minimum the power:

(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;

(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

(c) To submit proposals and observations concerning existing or draft legislation.

Article 20

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

(a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;

(e) The liberty to choose the places they want to visit and the persons they want to interview;

(f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Article 21

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organisation for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organisation shall be otherwise prejudiced in any way.

2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

Article 22

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Article 23

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

PART V

Declaration

Article 24

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.

2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Pre vention, the Committee against Torture may extend that period for an additional two years.

PART VI

Financial provisions

Article 25

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.

2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

Article 26

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.

2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organisations and other private or public entities.

PART VII

Final provisions

Article 27

1. The present Protocol is open for signature by any State that has signed the Convention.

2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 28

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

Article 29

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 30

No reservations shall be made to the present Protocol.

Article 31

The provisions of the present Protocol shall not affect the obligations of States Parties under any

regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

Article 32

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 33

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the St ate Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.

3. Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

Article 34

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two -thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

Article 35

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 36

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

(a) Respect the laws and regulations of the visited State;

(b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 37

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.