



THE OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE

The United States' ratification of OPCAT is critical to the prevention of torture in the United States and around the world

Most international mechanisms to end torture lack necessary enforcement capacities. However, the Optional Protocol to the Convention Against Torture (OPCAT) requires participating countries to set up monitoring systems to ensure that prisoner rights are not violated and provides for international monitoring to ensure both transparency and enforcement. Consistent independent monitoring of detention sites - whether sites for criminal detainees, administrative detainees or those captured in armed conflict - has been found to be the most effective way to deter torture and cruel treatment. 60 nations have ratified OPCAT and 21 additional nations have signed it. These numbers are quite remarkable, given the somewhat extensive monitoring procedures discussed below. Its success is largely based on the experience of other independent monitors, including the International Committee of the Red Cross and the European Committee to Prevent Torture, which have made a significant difference in protecting detainees from torture. However, the United States has neither signed nor ratified OPCAT.

OPCAT establishes a two-part system of regular visits to prisons and other detention centers: first, by a new international body, the UN Subcommittee on the Prevention of Torture (SPT), and second, by bodies acting to carry out the National Preventive Mechanisms (NPMs) established by ratifying governments. Under OPCAT, the SPT has unrestricted access to all places of detention, their installations and facilities and to all relevant information relating to the treatment and conditions of detention of persons deprived of their liberty. States are selected for SPT visits by lots and States are given notice of an upcoming visit a few months in advance. Since 2007 the SPT has made or is currently making visits to Mauritius, Maldives, Sweden, Benin, Mexico, Paraguay, Honduras, and Cambodia. The visits are conducted by at least two members of the SPT.

OPCAT provides a viable independent body to ensure that national governments are taking appropriate steps to monitor their places of detention and thereby prevent torture and other abuse of prisoners. Its extensive procedures to monitor State detention facilities provide transparency and the SPT

At the June 2009 retreat of the National Religious Campaign Against Torture (NRCAT) Board of Directors, the Board agreed to begin a planning process to determine if NRCAT should continue its work to end U.S.-sponsored torture and at the same time expand its focus to include ending torture in U.S. prisons and advocating for U.S. policies and practices that help end torture by other governments. There was a separate planning process for each of the possible new areas.

Both planning processes recommended that NRCAT work for the ratification of the Optional Protocol to the Convention Against Torture (OPCAT), suggesting that its ratification would help accomplish both goals. On December 10, 2009, the Board of Directors of the National Religious Campaign Against Torture voted to continue its efforts to end U.S.-sponsored torture forever and to expand into the two new areas of work.

reporting techniques – keeping visit reports confidential when States comply with recommendations, but maintaining the ability to make reports public when States fail to comply – provides an effective enforcement mechanism to protect prisoners from torture and cruelty.

The United States Treaty Ratification Process

A treaty sent to the Senate for ratification is normally referred to the Senate Foreign Relations Committee. The Committee usually holds a hearing on the treaty, to determine if there are any public concerns, or a need for special legislative implementation. A decision is made by the Committee Chair on what the appropriate process should be.

The submission of a treaty to the Senate may include specific reservations or declarations that should be made, recommended by the Administration. These declarations can then be made by the Senate as part of their consent to the treaty.

There may be United States laws that need to be changed as a result of treaty approval. A separate legislative bill is introduced by supporters of the Administration to accomplish this change, and the bill follows the standard process for approval of new laws in the Congress. The Senate may wait for the legislation to be approved before giving its consent to the treaty. Alternatively, the President may decide not to deposit the final documents necessary to implement the treaty until the separate legislation has passed.

The final steps for Senate consent are a recommendation by the Senate Foreign Relations Committee and a favorable vote by the Senate (at least 67 Senators need to vote for it). A treaty like OPCAT will generally go through this process to be ratified:

First, the Administration reviews a treaty to see if it is consistent with United States policies and law. Generally speaking, the State Department leads this review. If the treaty is consistent with U.S. policies and law, and if the President determines that both the policy and political situation are favorable, then the President may sign it. After the President signs a treaty, the State Department prepares the documents for submission to the Senate to request approval of the treaty.