



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

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Geneva, 24 November 2016

Dear Mr. Falkanger, Jääskeläinen and Sørensen,  
Dear Ms. Leth and Rynning,

Thank you for your joint letter of 11<sup>th</sup> November 2016 to the UN SPT in which you set out a number of concerns arising from the establishment of the NGO 'NPM Observatory', and in particular the concept paper dated 8<sup>th</sup> May 2016 which the Observatory has circulated and discussion of that paper at the OSCE meeting in Vienna in October. The SPT has had the opportunity to consider your letter at its 30<sup>th</sup> session and would like to clarify its understanding of the situation.

The SPT affirms that the independence and impartiality of institutions designated as NPMs is of paramount importance, as it is the foundation for their functional independence on which the work of a successful and OPCAT compliant NPM is grounded. The SPT further affirms that the 'triangular relationship' between the SPT, NPM and State party provides a uniquely strong basis for a system of prevention which must not be imperilled. Mutual confidence and trust between those involved in that relationship is very important. Whilst the SPT strongly believes that the work of NPMs should be visible, preserving the confidentiality of those elements of NPM work concerning directly persons deprived of their liberty, in accordance with OPCAT principles, is of fundamental importance: indeed, it is a legal obligation.

At the same time, the SPT also believes that besides fruitful relationship with its two treaty-related partners – state and SPT - all NPMs can benefit from advice on how best to fully implement their mandate. Such advice may be had from the SPT itself, other international bodies and NPMs as well as NGOs with experience of NPM related work. The OPCAT provides a clear framework for the provision of such advice and assistance from the SPT. As regards advice and assistance from other sources, including NGOs, the SPT believes it has to be for each NPM to determine whether a proposed form of activity raises issues related to its independence and of the confidentiality of privileged material.

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The SPT considers that the independence of an NPM could be at risk if it felt constrained to accede to forms of external scrutiny of its working methods, by NGOs or others. Any such offers ought to be made in an open spirit and with no consequence flowing from such offers being declined. Should such offers be accepted, it ought to be for the NPM to determine whether, in its view, the form of interaction proposed respected its own legal framework and the principles of cooperation and confidentiality as provided for in domestic law and the OPCAT framework. Whilst the SPT does not believe that the observation of NPM work by external bodies for the purposes of capacity building and the improvement of working methodologies is necessarily incompatible with OPCAT, it is essential that any such activities by NGOs are attended by the consents and permissions necessary to ensure such compliance.

It naturally follows from this that any such exercise undertaken may have a degree of artificiality attached to it. For this reason alone – though there are many others – the SPT does not believe that it is appropriate for NGOs or other such external bodies to offer any form of quasi-formal assessment of the manner in which NPMs undertake their work. There is a fine – but clearly discernible – line between helpful comment and suggestion (which are acceptable and to be encouraged) and quasi-assessments (which is not). Moreover, and as is well known, the SPT does not itself employ, and does not endorse or recognise, any system of NPM accreditation.

The SPT welcomes initiatives which offer to assist develop the capacities of NPMs when these are undertaken in accordance with OPCAT principles and reflect the approaches established by the SPT. It is, however, axiomatic that when such offers outside of the OPCAT framework NPMs must feel free to accept or reject them as they think fit, without implication or consequence, and that they must be undertaken in a manner which accords with the principles of OPCAT, including that of confidence, trust and confidentiality.

Once more we would like to emphasise the existence of article 11.1.b.ii and ii in OPCAT providing possibility for mutual technical and capacity building exchange between NPMs and SPT. We do encourage you to utilize this option whenever necessary.

Sincerely yours,

A handwritten signature in black ink, reading "Malcolm Evans".

Sir Malcolm Evans

SPT Chairperson of the Subcommittee on Prevention of Torture

Cc:

Ms. Mari Amos, SPT member and Country Rapporteur for Denmark and Finland

Ms. Margret Osterfeld, SPT member and Country Rapporteur for Sweden

Mr. Victor Zaharia, SPT member and Country Rapporteur for Norway