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Norwegian Parliamentary Ombudsman

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THE SWEDISH PARLIAMENTARY OMBUDSMEN

11 November 2016

The UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva
Switzerland

Concerns regarding the establishment of the NPM Observatory

The Parliamentary Ombudsmen of Denmark, Finland, Greenland, Norway and Sweden take this opportunity to convey to the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) our concerns regarding information received on the establishment of a non-governmental organization, the *NPM Observatory*.

As NPMs we welcome having a constructive dialogue with domestic and international non-governmental organizations and regard such interaction as valuable elements of our preventive work. We also recognize that the needs among the global group of NPMs vary a great deal, and that some NPMs require more of sustained, in-depth support from e.g. the SPT and civil society actors, than others. Nevertheless, we would like to express our concerns regarding information received on the establishment of a non-governmental organization, the NPM Observatory. In our view, the proposed purpose and mandate of the organization, as described in a concept paper dated 8 May 2016, presuppose that NPMs ought to grant this actor a unique standing that is not comparable to that enjoyed by other similar organizations in civil society. We question whether the envisaged relationship between us, as Ombudsmen and NPMs, and this new organization would be appropriate, or even realistically achievable, and would like to outline our main concerns.

The task of exercising the mandate set out in the Optional Protocol to the Convention against Torture (OPCAT) has been bestowed upon the Parliamentary Ombudsmen of Denmark, Finland, Greenland, Norway and Sweden by the parliaments of our respective

states. The independence and impartiality of our institutions is a guarantee for the functional independence of the National Preventive Mechanisms (NPMs) under the auspices of the Ombudsmen.

In June this year the Norwegian and Swedish Parliamentary Ombudsmen received a pledge for support titled *Torture prevention must be effective*. The pledge included a concept paper, *Setting up an independent observatory of NPMs*, dated 8 May 2016. This communication was not responded to as the rationale behind the initiative as well as the organizational affiliation of the initiators appeared unclear.

However, following the first Annual Meeting of National Preventive Mechanisms from the OSCE region (13-14 October 2016), where further information about the initiative came to the fore, we have found it necessary to express our views on some of the arguments and premises upon which the initiative is built.

First of all, being NPMs within Ombudsmen institutions, we disagree with the point of departure of the NPM Observatory initiative. The OPCAT was created with a combination of national and international bodies specifically aimed at strengthening efforts to prevent torture and other cruel, inhuman or degrading treatment or punishment. The triangular relationship between States Parties, the SPT and NPMs is a unique feature of the OPCAT. We therefore oppose the slightly general notion that the independence of the NPMs as stated in the OPCAT may “be a screen, concealing inaction and providing only a semblance of effectiveness” as stated in the call for support *Torture prevention must be effective*. On the contrary, despite remaining challenges, the coming into force of the OPCAT 10 years ago has given renewed energy and commitment to the international and national efforts to prevent torture and ill-treatment. It is our belief that the OPCAT establishes an exceptionally strong system of prevention and we would like to take this opportunity to express our appreciation of the continued support and advice received from the SPT pursuant to article 11 of the protocol. At the same time, and as stated above, we do acknowledge that the needs for support among the global group of NPMs can vary a great deal.

Secondly, the Parliamentary Ombudsmen, under both the legislative mandates entrusted to us by our parliaments and the OPCAT mandate, operate under strict confidentiality requirements in order to protect the inviolability of all persons deprived of their liberty. Consequently, we question the role of a non-governmental organization in conducting assessments of NPMs, *inter alia* through observing them at work as outlined in the concept paper *Setting up an independent observatory of NPMs*. Our NPMs conduct visits to closed institutions in which confidentiality and trust is a key element. During these visits NPM staff carry out highly sensitive interviews including with those deprived of their liberty. It is our opinion that the presence of external observers could run the risk of undermining the mandate as NPMs and potentially cause harm to those deprived of their liberty. Similarly, there are clear limitations as to the dissemination of information from the NPMs to others than the SPT, be it organizations, other bodies or individuals. Article 21 of the OPCAT

underlines the privileged status of all confidential information collected under the NPM mandate.

While abiding by the strict confidentiality requirements governing us as Ombudsmen and as NPMs, the signatories to this letter all apply a *modus operandi* of transparency to facilitate public debate. Thus, the Parliamentary Ombudsmen annually report to the Parliaments as well as to the SPT on the implementation of the OPCAT mandate. These reports are open and available to all interested parties. Furthermore, we support initiatives that may serve the purpose of enhancing our effectiveness through cooperation between NPMs as well as with external institutions and individuals.

In order to continue to consolidate a constructive and effective system as envisaged by the OPCAT, we remain committed to working closely with the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Please accept the assurances of our highest consideration.



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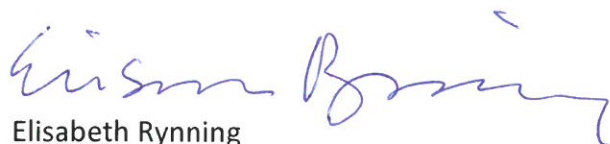
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