

Doc. 14788
03 January 2019

Improving follow-up to CPT recommendations: enhanced role of the Parliamentary Assembly and of national parliaments

Report¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Damir ARNAUT, Bosnia and Herzegovina, Group of the European People's Party

Summary

The long-standing recommendations made in reports by the European Committee for the Prevention of Torture, along with the evident need for the Parliamentary Assembly to continue to address detention-related issues, show the importance of maintaining and enhancing efforts to prevent torture and inhuman or degrading treatment or punishment in Council of Europe member States.

The extensive work already undertaken on the role of national parliaments as guarantors of human rights shows that there are many promising avenues to be explored by which more could be done to ensure that recommendations by the CPT are better implemented by national authorities. The creation of new structures and mechanisms at national level in accordance with the Assembly's "Basic principles for parliamentary supervision of international human rights standards" or a re-emphasis of the mandate and activities of existing structures and mechanisms, and more efficient monitoring and follow-up mechanisms, would help to achieve this.

The Assembly's parliamentary co-operation activities could include projects to support this specific function.

1. Reference to committee: [Doc. 14373](#), Reference 4327 of 13 October 2017.



Contents	Page
A. Draft resolution	3
B. Draft recommendation	5
C. Explanatory memorandum by Mr Damir Arnaut, rapporteur	6
1. Introduction	6
2. Role of the Parliamentary Assembly	7
2.1. Providing the necessary follow-up to public statements issued by the CPT	7
2.2. Holding a joint annual hearing on the CPT's annual report and ad hoc thematic hearings	7
2.3. Reporting on the prevention of torture in Europe	8
3. Role of national parliaments	8
3.1. What role do parliamentarians have in overseeing compliance of CPT recommendations?	9
3.2. A proactive approach towards CPT standards	11
3.3. Opportunities for parliamentary co-operation activities	14
4. Conclusions and general policy recommendations	14

A. Draft resolution²

1. The Parliamentary Assembly reiterates its appreciation for the outstanding work of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which has led to significant improvements in conditions of detention in the States Parties to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter “the convention”). The ongoing work of the CPT clearly demonstrates, however, that more remains to be done to make Europe a “torture-free zone”.
2. The Assembly has for many years developed its role in supporting and promoting the work of the CPT. The Assembly frequently adopts thematic resolutions relating to conditions of detention and the prevention of torture and ill-treatment, an area that is also often addressed in resolutions adopted in the context of the monitoring procedure. In addition, the Committee on Legal Affairs and Human Rights has developed the practice of holding an exchange of views with the head of the delegation concerned, whenever the CPT issues a public statement concerning a particular country.
3. National parliaments can play an essential role in the promotion and protection of CPT standards, with numerous possibilities available to parliamentarians who wish to be proactive in the review and implementation of CPT recommendations, thus ensuring further transparency and accountability for member States’ obligations relating to Article 3 of the European Convention on Human Rights (ETS No. 5), and fostering the creation of a deep-rooted human rights culture.
4. In this context, the Assembly recalls its [Resolution 1823 \(2011\)](#) “National parliaments: guarantors of human rights in Europe”, in which it called on parliaments to set up and/or to reinforce structures that would permit the mainstreaming and rigorous supervision of their international human rights obligations, on the basis of the “Basic principles for parliamentary supervision of international human rights standards” appended to that resolution.
5. The Assembly therefore:
 - 5.1. encourages its Committee on Legal Affairs and Human Rights to:
 - 5.1.1. further develop its practice of holding an exchange of views with the head of the delegation concerned whenever the CPT issues a public statement concerning a particular country;
 - 5.1.2. consider organising ad hoc thematic hearings on new standards or outstanding issues originating in the work of the CPT;
 - 5.2. encourages its Committee on Legal Affairs and Human Rights and its Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe to consider jointly inviting the President of the CPT to an annual exchange of views during which he or she could, *inter alia*, present the CPT’s most recent annual report;
 - 5.3. resolves to maintain a focus on the issue of conditions of detention and prevention of torture and ill-treatment, including through reports and participation in activities related to standard-setting and implementation.
6. The Assembly invites the national parliaments of member States to:
 - 6.1. react promptly to CPT reports concerning their own country, in particular by holding their governments to account for the timely implementation of CPT recommendations;
 - 6.2. give priority to legislative reforms required to ensure compliance with CPT recommendations;
 - 6.3. appeal to their government to take immediate, effective action in response to any public statements adopted by the CPT under Article 10 of the convention concerning their country;
 - 6.4. ensure that the mandate of the structure responsible for the mainstreaming and rigorous supervision of the State’s international human rights obligations, established in accordance with [Resolution 1823 \(2011\)](#), includes promoting the implementation of CPT recommendations and the review of CPT annual reports;

2. Draft resolution adopted unanimously by the committee on 13 December 2018.

- 6.5. make CPT reports concerning their own country more accessible by having them translated into the national language, where possible, and making them available in the parliamentary documentation centre and on their website;
 - 6.6. liaise with national preventive mechanisms and any other relevant national human rights structures on the implementation of CPT recommendations;
 - 6.7. consider organising a one-off review of the CPT's recommendations to identify evolutions in standards and outstanding recommendations concerning their own countries, to mark the 30th year of the CPT's existence in 2019;
 - 6.8. co-operate with the Assembly's Parliamentary Project Support Division in the organisation of activities intended to enhance the parliament's capacity to promote implementation of CPT recommendations;
 - 6.9. appeal, when necessary, to their government to take all necessary steps to ensure that nominations of CPT members are submitted in a timely manner.
7. The Assembly invites the member States to:
 - 7.1. co-operate fully with their national parliament on implementation of CPT recommendations;
 - 7.2. agree in advance to the automatic publication of CPT visit reports and related government responses, subject to the possibility of delaying publication for a certain period in specific circumstances.
8. The Assembly invites Turkey to authorise immediately the publication of the report of the ad hoc visit of the CPT in 2016.

B. Draft recommendation³

1. The Parliamentary Assembly recalls its Resolution ... (2019) on improving follow-up to CPT recommendations: enhanced role of the Parliamentary Assembly and of national parliaments.
2. The Assembly reiterates its invitation to the Committee of Ministers, previously extended in [Recommendation 1968 \(2011\)](#) on strengthening torture prevention mechanisms in Europe, to place on its agenda and discuss as a matter of urgency any public statement adopted by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment under Article 10 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126), and to adopt a resolution in this sense, as appropriate.

3. Draft recommendation adopted unanimously by the committee on 13 December 2018.

C. Explanatory memorandum by Mr Damir Arnaut, rapporteur

1. Introduction

1. The motion for a resolution underlying the present report recalls [Resolution 2160 \(2017\)](#) “25 years of the CPT: achievements and areas for improvement”, in which the Parliamentary Assembly decided to “develop its role in contributing to the follow-up of CPT recommendations, in particular by encouraging national parliaments to adopt a proactive approach to them”. Possible methodologies suggested by the Assembly in [Resolution 2160 \(2017\)](#) included discussion of the reports and/or public statements by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on their countries, including follow-up thereto, in the parliamentary committees concerned, and submitting parliamentary questions to governments. The use of the Assembly’s parliamentary co-operation activities to encourage such initiatives was mentioned, as was the possibility of taking inspiration from existing national practices in relation to the implementation of judgments of the European Court of Human Rights.⁴

2. The Assembly has on several occasions recalled the outstanding work of the CPT and proposed ways to make the CPT stronger by preserving its effectiveness and credibility, in its [Resolution 1248 \(2001\)](#) “European Committee for the Prevention of Torture (CPT): composition of the Committee” and [Resolution 1540 \(2007\)](#) on improving selection procedures for CPT members, for instance. In [Resolution 1808 \(2011\)](#) on strengthening torture prevention mechanisms in Europe and [Resolution 2160 \(2017\)](#), the Assembly further recommended that national parliaments and the Assembly engage in timely dialogues to question and seize governments on issues raised by the CPT.

3. Recommendations by the CPT can be found in its annual reports, public statements and country visit reports and cover a wide variety of situations, ranging from concrete material conditions of places of detention to legal frameworks, institutional culture, procedures, practices and attitudes. The number of recommendations per country is impressive. In some countries, the CPT is starting its sixth or seventh periodic visit, each followed by a report with a number of concrete and realistic recommendations.

4. For the purposes of this report, I sent a questionnaire to national parliaments to examine the situations across the Council of Europe member States.⁵ Thirty countries replied and I would like to thank those parliaments⁶ for providing their valuable feedback. The Committee on Legal Affairs and Human Rights also held a hearing in October 2018 with the participation of George Tugushi, CPT expert, former Ombudsman in Georgia, member of the Georgian Parliament, and Barbara Bernath, Secretary General of the Association for the Prevention of Torture (Geneva, Switzerland).

5. Before proceeding, however, I would draw attention to certain important distinctions between judgments of the Court and recommendations of the CPT. The first is reflected in the terminology: Court judgments are binding on respondent States, whereas CPT recommendations, strictly speaking, are not. However, as the CPT has emphasised on many occasions, the principle of co-operation set out in Article 3 of the Convention establishing it (the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126), [ECPT](#)) requires that States take decisive action to improve the situation in the light of its recommendations. That is a very specific feature of the CPT when compared with other monitoring bodies or national preventive mechanisms. However, under Article 10.2 of the same convention, failure to co-operate or refusal to improve the situation may only lead the CPT to make a public statement on the matter. There may be a need for other actors, including parliamentarians, to intervene.

4. [Doc. 14373](#), Reference 4327 of 13 October 2017. I was appointed rapporteur on 12 December 2017.

5. The questionnaire, sent through the European Centre for Parliamentary Research and Documentation, contained the following two questions: 1) Does your parliament take any particular action following the publication by the CPT of a report concerning your country?; 2) Does this action include measures intended to promote implementation of recommendations contained in the report? If so, please provide details, including concrete examples.

6. Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Georgia, Germany, Greece, Iceland, Italy, Latvia, Lithuania, "the former Yugoslav Republic of Macedonia", Netherlands, Norway, Poland, Portugal, San Marino, Slovak Republic, Slovenia, Spain, Sweden, Turkey, United Kingdom.

2. Role of the Parliamentary Assembly

6. Before turning to the question of how national parliaments could better support the work of the CPT, I would like first to examine the suggestions in [Resolution 2160 \(2017\)](#) concerning the Assembly: to reinforce its political support by reacting appropriately to the CPT's public statements; to strengthen its existing dialogue with the CPT, in particular via the Committee on Legal Affairs and Human Rights; and, more generally, to pay greater attention to the prevention of torture in member States (paragraph 8).

2.1. Providing the necessary follow-up to public statements issued by the CPT

7. Mr Jordi Xuclà's report⁷ and [Resolution 2160 \(2017\)](#) were adopted over a year ago, and there have been no significant changes in the Assembly's working methods since then. I refer to the detailed description in this report of the Assembly's past work, notably in relation to its role in the procedure for election of CPT members, including its recommendations concerning national procedures for the selection of candidates, the practice of requesting the Committee of Ministers to react to the public statements issued by the CPT and the practice of holding an exchange of views with the head of the Assembly delegation of any country with respect to which the CPT has made a public statement.

8. Since [Resolution 2160 \(2017\)](#) was adopted on 26 April 2017, our committee has reaffirmed its practice of holding an exchange of views with a CPT representative and the leader of the national delegation concerned after the CPT has issued a public statement.⁸ Following the CPT's public statement of 13 July 2017 on Belgium, on 12 October 2017 the committee discussed the matter with Mr Hendrik Daems, Chairperson of the Belgian delegation, along with Mr Mark Kelly, 2nd Vice-President of the CPT and head of the CPT delegation that had visited Belgium. The committee then decided to come back to the issue in a year's time, in order to review progress made by the Belgian authorities in addressing the problems to which the CPT had drawn urgent attention. In his presentation during the hearing held with the committee in October 2018, Mr Tugushi indicated that the Belgian Parliament was soon to discuss a draft law, which included provisions aimed at addressing the CPT's concerns about the absence of a guaranteed minimum service in prisons during periods of industrial action by prison staff.

9. The Belgian example shows how dialogue and political support within the Assembly can help ensure that important and necessary improvements, recommended by the CPT, are made at a national level. However, as stated by the expert, Mr Tugushi, when the CPT reaches the point where a public statement is needed, a serious failure to improve national situations in the light of its recommendations has already occurred. While prompt reactions to public statements and the organisation of specific hearings must continue to be featured within our committee's agenda on a systematic basis, parliamentarians have understandably a greater interest in preventing national situations from reaching such a critical point.

2.2. Holding a joint annual hearing on the CPT's annual report and ad hoc thematic hearings

10. Another proposal made in [Resolution 2160 \(2017\)](#) (paragraph 9) was for our committee and the Assembly's Monitoring Committee to consider jointly inviting the President of the CPT to an annual exchange of views during which he or she could, *inter alia*, present the CPT's annual report. The chairpersons of Assembly delegations of the countries for which CPT visit reports are mentioned in the annual report and relevant representatives of civil society could be invited to participate in this exchange of views. This is an interesting proposal as it creates an opportunity for members to clarify any misunderstandings and would allow them to feel more engaged to make the best use of the reports in their national parliament and in the Assembly's work on national developments, European trends and any urgent improvement needed, both at a policy level and a practical level. If some reports are not public, Assembly members could encourage the state concerned to authorise this.

11. The study of the CPT's annual report could also lead to the organisation of ad hoc thematic hearings on new standards or outstanding issues, possibly within the framework of our committee's recently established thematic debates during our regular meetings. This also has the advantage of creating no extra costs to the Assembly. The organisation of a joint annual hearing, however, may need further examination in the light of the Assembly's current budgetary situation. On the one hand, committees are encouraged to reduce the number of meetings they hold outside part-sessions, which allows fewer opportunities for such necessarily time-consuming activities. On the other hand, budgetary cuts may reduce the number of texts that rapporteurs

7. [Doc. 14280](#).

8. Individual Assembly members have also taken public position: see, for instance, [Human Rights Sub-Committee Chairperson worried about CPT public statement concerning Bulgaria](#), 30 March 2015.

are able to finalise for presentation at committee meetings, leaving more time available for other items of business, such as the proposed exchange of views. Our committee should reflect further upon whether such an activity would align with its priorities, given this situation. The proposal would also need to be examined by the Monitoring Committee, in the light of its own priorities and resources.

2.3. Reporting on the prevention of torture in Europe

12. As to the Assembly paying greater attention to the prevention of torture in member States, I would begin by recalling our committee's ongoing report on protecting human rights during transfers of prisoners (rapporteur: Mr Emanuel Mallia, Malta, SOC). The Assembly has also addressed other detention-related issues in recent years, including in [Resolution 2223 \(2018\)](#) on detainees with disabilities in Europe, [Resolution 2154 \(2017\)](#) on securing access of detainees to lawyers, [Resolution 2122 \(2016\)](#) on administrative detention, [Resolution 2082 \(2015\)](#) on the fate of critically ill detainees in Europe, [Resolution 2077 \(2015\)](#) on abuse of pretrial detention in States Parties to the European Convention on Human Rights and [Resolution 2020 \(2014\)](#) on the alternatives to immigration detention of children. Detention-related issues have also figured prominently in more general reports on migration, such as [Resolution 2174 \(2017\)](#) on human rights implications of the European response to transit migration across the Mediterranean. They have also appeared in country-specific reports, for instance [Resolution 2240 \(2018\)](#) on unlimited access to member States including "grey zones", by Council of Europe and United Nations human rights monitoring bodies, [Resolution 2157 \(2017\)](#) on human rights in the North Caucasus: what follow-up to [Resolution 1738 \(2010\)](#)? and [Resolution 2133 \(2016\)](#) on legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities. There are also recurrent in reports of the Monitoring Committee (for example [Resolution 2203 \(2018\)](#) on progress of the monitoring procedure (January-December 2017) and periodic review of Estonia, Greece, Hungary and Ireland, [Resolution 2156 \(2017\)](#) on the functioning of democratic institutions in Turkey and [Resolution 2149 \(2017\)](#) on progress of the monitoring procedure (September 2015-December 2016) and periodic review of Austria, the Czech Republic, Denmark, Finland, France and Germany), and in our own committee's work on the implementation of judgments of the European Court of Human Rights (e.g. [Resolutions 2178 \(2017\)](#) and [2075 \(2015\)](#) and the accompanying reports). Several of these resolutions are accompanied by a recommendation to the Committee of Ministers in which the Assembly generally calls on governments to continue paying the utmost attention to the prevention of torture and respect for human dignity in detention.⁹

13. I hope that this focus will be maintained. It is through this reporting process and by keeping a close watch on relevant issues of concern and national progress that members of the Assembly participate in raising awareness on CPT activities and standards, and eventually actions being taken by relevant stakeholders, aiming at "zero-tolerance for torture" policies implemented in all European member States. In this context, Assembly committees should continue to hear from relevant experts, through the consideration of their interventions in committee hearings or written submissions on specific issues, and the participation of Assembly members, in relevant conferences. Rapporteurs and general rapporteurs also have the possibility to carry out fact-finding visits¹⁰ and follow-up on issues at the core of the work of the CPT, subject to the availability of resources.¹¹

3. Role of national parliaments

14. As noted above, [Resolution 2160 \(2017\)](#) included two main concrete proposals: CPT reports to be made the subject of parliamentary committee discussions and questions to governments; and promotion of an enhanced role for national parliaments through the Assembly's parliamentary co-operation activities. The Assembly's work to promote implementation of judgments of the European Court of Human Rights is instructive in respect of both.

9. See, for instance, [Recommendation 2132 \(2018\)](#) on detainees with disabilities in Europe, [Recommendation 2099 \(2017\)](#) on human rights in the North Caucasus: what follow-up to [Resolution 1738 \(2010\)](#)?, [Recommendation 2110 \(2017\)](#) on the implementation of judgments of the European Court of Human Rights, [Recommendation 2081 \(2015\)](#) on abuse of pretrial detention in States Parties to the European Convention on Human Rights, [Recommendation 2056 \(2014\)](#) on the alternatives to the immigration detention of children.

10. See, for example, [A rapporteur to make fact-finding visit to Romania and Montenegro on critically ill detainees in Europe](#), 22 May 2015.

11. See, for example, the committee's [statement](#) urging the Russian Federation to release Ukrainian citizens detained on politically motivated charges, as a follow-up to [Resolution 2231 \(2018\)](#), 10 October 2018.

3.1. What role do parliamentarians have in overseeing compliance of CPT recommendations?

3.1.1. General remarks on parliaments' role with respect to implementing CPT standards

15. Whilst the legal considerations mentioned in my introduction might seem to complicate the situation, from another perspective, the role of parliaments with respect to the implementation of CPT recommendations may be more straightforward. Domestic authorities are almost invariably directly responsible for detention conditions, meaning that governments are immediately competent to introduce necessary reforms. Parliamentary oversight of the executive can thus be a particularly effective means of promoting change in this area.

16. In [Resolution 1823 \(2011\)](#) on national parliaments: guarantors of human rights in Europe, the Assembly recalled that national parliaments “are key to the effective implementation of international human rights norms at national level and fulfil their duty to protect human rights through [inter alia] holding the executive to account, liaising with national human rights institutions and fostering the creation of a pervasive human rights culture. The members of the Assembly, having a double mandate – as members of the Assembly and of their respective national parliaments – are under a particular duty to contribute to such action”.

17. [Resolution 1823 \(2011\)](#) encouraged parliamentarians to monitor the determination and enforcement of human rights standards by the domestic judicial and administrative authorities and urged them to carefully scrutinise the executive in their countries when it comes to the implementation of, in particular, international human rights norms. It also called on parliaments to set up and/or to reinforce structures that would permit the mainstreaming and rigorous supervision of their international human rights obligations, on the basis of the appended “Basic principles for parliamentary supervision of international human rights standards” (the “Basic principles”). These Basic principles cover the appropriate framework and responsibilities; access to independent expert advice; and co-operation with other institutions (including national human rights institutions) and civil society. In [Resolution 2075 \(2017\)](#) on implementation of judgments of the European Court of Human Rights, the Assembly again called on States Parties to implement the Basic principles. The United Nations Secretary General also stated in his August 2017 report that “while human rights are a cross-cutting issue that should be taken into account by all parliamentary committees, the establishment of a parliamentary committee with an exclusive human rights mandate sends a strong political message and should be encouraged”.¹²

18. The United Nations Human Rights Council has similarly recalled “the crucial role that parliaments play in, inter alia, translating international commitments into national policies and laws, and hence in contributing to the fulfilment by each State Member of the United Nations of its human rights obligations and commitments and to the strengthening of the rule of law”.¹³ The [2015 Brussels Declaration](#) on “Implementation of the European Convention on Human Rights, our shared responsibility” also reiterated the primary role played by national parliaments in guaranteeing and protecting human rights at national level.

19. Additionally, in its recent report, the United Nations Human Rights Council recognised even further the fundamental role of parliaments in the promotion and protection of human rights, building on similar principles evoked by the Assembly in 2011, by developing “draft principles on parliaments and human rights” (the “draft principles”) to be further considered in consultation with members of parliamentary human rights committees.¹⁴ The report also described parliaments as “guardians of the important role of civil society organisation” from which they gather “human rights developments and concerns”. It adds that “parliaments are thus uniquely positioned to contribute to closing the implementation gap, to prevent violations of human rights and to ensure better protection, especially of vulnerable groups”. Moreover the report states that “parliaments serve as a nexus between the international and national human rights arena, providing as one of the principal channels through which the international and regional human rights mechanisms’ recommendations reach the national level, in particular in their legislative, budget allocation and oversight roles”. From the foregoing considerations, governing bodies should benefit from their efforts to promote opportunities to enhance parliaments’ role in the prevention and implementation process of CPT recommendations.

12. Strengthening United Nations action in the field of human rights through the promotion of international cooperation and the importance of non-selectivity, impartiality and objectivity, Report of the Secretary-General, 21 August 2017, A/72/351, paragraph 35.

13. “Contribution of parliaments to the work of the Human Rights Council and its periodic review”, A/HRC/30/L.23, 29 September 2015; and Resolution adopted by the Human Rights Council on 23 June 2017, A/HRC/RES/35/29.

14. “Contribution of parliaments to the work of the Human Rights Council and its periodic review”, A/HRC/38/25, 17 May 2018; see in particular annex I for the “draft principles on parliaments and human rights”.

3.1.2. Reinforced dialogue with the executive on the implementation of CPT recommendations

20. National parliaments have first and foremost an essential role to play in holding their governments to account.¹⁵ Dialogue between the governments and parliaments should be particularly reinforced on matters related to CPT recommendations pertaining to the country individually and general European standards. At least two thirds of the replies I received from the parliamentary research services saw their parliament's role, with regard to the implementation of CPT standards, as a part of general government oversight.

21. I gathered from my research that parliamentary discussions were most often triggered on an ad hoc basis. For example, the Slovak Republic's National Council has reacted to cases of ill-treatment by public authorities and considered legislative amendments aimed at complying with the recommendations of the CPT.¹⁶ Although I believe there are many ways for parliaments to be more proactive, as I will describe at a later stage, this reactive approach, as termed by Mr Tugushi during our hearing, remains essential to the work of the governments. CPT reports should provide parliaments with the means to react effectively to the governments' policies and practices pertaining to CPT recommendations. In turn, governments can feed any new information, extracted from the public parliamentary debates and regular written or oral parliamentary questions, into their implementation reports and relevant reforms. Parliaments become essential counterparts to governments' adequate implementation of CPT recommendations.¹⁷

22. According to Mr Tugushi, several parliamentary committees at national level have been organising hearings with CPT representatives and other national and international experts when relevant bills or budgetary proposals were being tabled in parliament. According to him, there are clear examples of parliamentarians expressly referring to CPT reports when discussing new legislation on prisons. He mentioned the use, by Belgian parliamentarians, of CPT considerations within their discussions of a law on the prison service and the status of prisoners in 2005. French parliamentarians also looked carefully at CPT reports when discussing a prison law a few years later. I would encourage such practice to be taken up by national parliaments on a quasi-systematic basis.

23. CPT visit reports are addressed to governments on a confidential basis to facilitate close co-operation with the national authorities. However, these reports should be swiftly published after transmission, as should the government responses. This would allow an increase in the parliament's knowledge of CPT related-issues and facilitate the relevant dialogue between the parliament and the government. The Assembly has commended in particular the developing practice of States to agreeing "in advance to the automatic publication of CPT visit reports and related government responses, subject to the possibility of delaying publication for a certain period in specific circumstances".¹⁸ Taking stock of the developments since my colleague, Mr Jordi Xuclà (Spain, ALDE), reported in his [explanatory memorandum to Resolution 2160 \(2017\)](#)¹⁹ that eight countries (i.e. Austria, Bulgaria, Finland, Luxembourg, the Republic of Moldova, Monaco, Sweden and Ukraine) had agreed to the "automatic publication procedure", I can add only one more country to the list: Denmark. I therefore renew the Assembly's call to member States for speedy systematic publication of the reports, as it enables national parliaments "to contribute to the process of taking forward the implementation of recommendations contained in a report".²⁰ If required, such procedure enables

15. For example, national parliaments should appeal, when necessary, to their governments to take all necessary steps to ensure that nominations of CPT members are submitted in a timely fashion.

16. In its reply to my questionnaire, the Slovak Republic's parliamentary institute indicated a debate that took place within the National Council on a possible review of the regulations of the police forces regarding the treatment of persons restricted to certain designated areas. This debate concerned an "Order for the implementation of tasks to comply with the recommendations of the CPT" issued by the police president on 26 January 2015.

17. See, for example, an [oral question by Belgian MP Gilles Vanden Burre](#), dated June 2018, and the written answer on the situation of detainees, in which he mentions findings by the CPT following its latest visit in 2017, [CPT/Inf\(2018\)8](#). See also a 2014 written [question by French MP Sergio Coronado](#) and the government's response on records of detainees being awoken during the night, mentioned by the CPT in its report on a 2010 visit to France, [CPT/Inf\(2012\)13](#), paragraph 67.

18. [Resolution 2160 \(2017\)](#), paragraphs 7.1 and 7.2. Automatic publication was also encouraged by the Committee of Ministers in its Reply to [Recommendation 2100 \(2017\)](#), 30 November 2017, [Doc. 14445](#). See also [Resolution 1808 \(2011\)](#), [Recommendation 1968 \(2011\)](#) and the Committee of Ministers' reply of 21 February 2012, [Doc.12877](#).

19. See [Doc. 14280](#), paragraph 39. See also the listing on the CPT's website, available at the following link: www.coe.int/en/web/cpt/faqs#automatic-procedure.

20. The CPT added in its most recent annual report that "authorising the publication of documents related to visits is indicative of the strength of commitment to the implementation of the CPT's recommendations. ... The CPT is pleased to note that both the Committee of Ministers and the Parliamentary Assembly of the Council of Europe have recently encouraged States which have not already done so to request the automatic publication of future CPT visit reports and related government responses". 27th General report of the CPT, 1 January to 31 December 2017, [CPT/Inf\(2018\)4](#).

parliamentarians to respond to situations demanding urgent action from the government or to make use of the most updated information on their country situation when discussing long-standing issues and national reforms.

24. Additionally, CPT reports should be made more accessible to parliamentarians and the wider public by being translated in their national language, where possible, and being made available in national parliaments' documentation centres and on regularly updated websites. This would certainly give parliaments and other organisations an enhanced opportunity to participate, through the various channels available for dialogue, in holding their governments to account, sharing their own opinions with the public at large and in safeguarding CPT standards.

3.1.3. Reinforced dialogue with national preventive mechanisms and other similar bodies

25. Torture prevention has become a shared responsibility which requires an integrated policy approach. To this end, national parliaments are highly encouraged to liaise with national human rights institutions, including national preventive mechanisms (NPMs) and ombudspersons, in order to ensure comprehensive information collection and a comprehensive debate on the implementation of standards on torture and detention.

26. In States Parties to the Optional Protocol to the United Nations Convention against Torture (OPCAT), NPMs have similar powers and mandate as the CPT and are permanently based in the country. There are 37 functioning NPMs among the Council of Europe member States.²¹ The Assembly recognised in its [Resolution 2160 \(2017\)](#) that NPMs are a "practical expression of subsidiarity". The Norwegian parliamentary Ombudsman informed me, for example, that the CPT has been an important source of both standards and methodologies since it established a dedicated NPM in 2014. The working methods of the Norwegian NPM have drawn heavily upon the methodologies developed and used by the CPT, including in the framework of visits to places of detention.

27. Not surprisingly, a majority of the replies I received to the questionnaire actually referred to their NPM or Ombudsperson's mandate in trying to meet the obligations related to the implementation of CPT standards. Therefore, synergies between these independent institutions and parliaments are essential if the latter are to follow up effectively on CPT recommendations. The vast majority already have direct contact with parliaments. According to the Association for the Prevention of Torture, 27 are ombudsinstitutions that present their annual report to parliament; this is also the case for some other specialised NPMs, such as the United Kingdom's Her Majesty's Inspectorate of Prisons or the French *Contrôleure générale des lieux de privation de liberté*. In Austria, the *Volksanwaltschaft* (Ombudsman Board) takes the lead to ensure follow-up on CPT recommendations. Its reports pay special attention to preventive human rights monitoring in general, and CPT issues in particular. These reports are then considered in the "Ombudsman Board Committee" of the National Council. As members of the Ombudsman Board have the right to speak in parliament, they emphasise these issues in the Budget Committee proceedings.

28. While respecting the OPCAT requirement that NPMs should be independent, parliaments can play a significant role in exploring further possibilities for interaction with such institutions. CPT reports can be used to reinforce the need to ratify the OPCAT and designate functioning NPMs. Parliaments can support the NPMs' suggestions and recommendations. Moreover, an ad hoc dialogue with NPMs and other similar bodies, possibly in conjunction with the government, should be established following every publication of CPT visit reports or public statement, or, where necessary, in the framework of relevant bills or budgetary decisions. These enhanced synergies could be set out in a memorandum of understanding.

3.2. A proactive approach towards CPT standards

3.2.1. Parliamentary mechanisms and tools for the review and promotion of CPT recommendations

29. Discussions of CPT country reports and public statements should be held soon after they are published, whether or not a draft law is being discussed. For example, the Greek Parliament's Special Permanent Committee on Equality, Youth and Human Rights discussed the CPT's preliminary observations following the CPT's ad hoc visit in April 2018 as soon as it had been published.²² The Portuguese Parliament

21. See the [OPCAT database](#) for the list of countries that have designated their NPM. Nine member States of the Council of Europe (Andorra, Belgium, Iceland, Ireland, Latvia, Monaco, Russian Federation, San Marino and Slovak Republic) are not States Parties to the OPCAT, and therefore have not designated an NPM. Bosnia and Herzegovina is a State Party to the OPCAT but has not designated a NPM.

informed me that they were currently envisaging hearings with the government leaders and members of the administration and visits to prisons, following the presentation to the parliament's Committee on Constitutional Affairs of the recent publication of the CPT report on its periodic visit in 2016.²³

30. It would also be relevant for the CPT's annual reports to be discussed on a systematic basis in parliaments, giving the possibility for parliamentarians to discuss thematic issues that may not yet be part of the country visit report, as explained by Ms Bernath, from the Association on the Prevention of Torture, during our hearing. I also support Ms Bernath's proposal for national parliaments to conduct a one-off review of the evolutions in practice and outstanding issues. This could possibly be conducted jointly by the national parliaments together with the NPMs or other national monitoring bodies, as well as the CPT. It could focus on a specific theme or type of place of detention and could start with a comparison between the first CPT visit report and its most recent (public) report. Analysis such as this should be useful for the parliament to define its strategic priorities. The choice of format for these events (length, target audience, etc.) and reporting exercises will have to be defined by parliaments depending on allocated resources, priorities, time available and the competing demands on the parliamentarians' attention.

31. Furthermore, parliamentarians should become voices for human rights and in particular for the prevention of torture, through their participation in general campaigns and interactive events. To this end, it would be most opportune to conduct awareness-raising events and training programmes for parliamentarians and their parliamentary staff on human rights, and in particular CPT standards. Parliamentarians can participate in identifying their needs and resources available for such activities.

32. Visits to places of detention have proven to be very useful for raising awareness among legislators of conditions of detention and the situation of detainees. Several parliaments in Europe give a special mandate to parliamentarians or specific committees to visit prisons and other places of detention.²⁴ These visits are not equivalent to monitoring visits, but instead enable parliamentarians to be confronted with the reality of places of detention. In these situations, CPT reports can prove to be invaluable working tools. They enable parliamentarians to get a sense of how the CPT's recommendations are implemented. The experience of visits should be useful to parliamentarians drafting bills and give them more authority when submitting questions to their governments on detention-related issues. I recall the Assembly's 2014 publication, in co-operation with the Association for the Prevention of Torture, of a "[A guide for parliamentarians – Visiting immigration detention centres](#)", which aims to raise awareness and encourage and assist parliamentarians in carrying out visits to places of detention where irregular migrants and asylum seekers are held. Many of the guiding principles set out in the guide can be applied to other places of detention.

33. While raising awareness of the general public on CPT standards in the course of their regular duties does not give rise to significant costs, some activities and tools may have to be specifically included in budgetary priorities. Some activities may indeed require a specialised secretariat and specific logistics, but this can also be organised in a cost-efficient manner. For example, parliamentarians can start by visiting any detention centre in their own constituency, should resources be limited, thus avoiding excessive travelling and accommodation costs. Making standards available in national languages on a public website, for example, whether through a parliament's documentation centre or otherwise, also requires co-ordination between stakeholders at parliament and government levels, and again, adequate resourcing.

3.2.2. Parliamentary structures for parliamentary review and promotion of CPT recommendations

34. As mentioned above, the Assembly's 2011 "[Basic principles](#)" recommend that "national parliaments shall establish appropriate parliamentary structures to ensure rigorous and regular monitoring of compliance with and supervision of international human rights obligations, such as dedicated human rights committees or

22. [CPT/Inf\(2018\)20](#).

23. [CPT/Inf\(2018\)6](#).

24. In 2014, the Assembly sent out a questionnaire to which 36 member States replied. It reported in its 2014 "[Guide for parliamentarians – Visiting immigration detention centres](#)", that "among those, 10 countries informed that parliamentarians have the right to visit all places of detention. This is either expressed (Belgium, Italy, France, Lithuania and Poland) or implicit in law or regulations (such as in Austria and Norway) or a right that simply derives from the general status of members of parliament (Hungary, Republic of Moldova and Portugal). In some countries, such as Romania or Finland, the possibility to visit places of detention is granted by the broad right of the parliamentarians to be informed, as guaranteed in the constitution. In the large majority of countries, the right is not specified in the law but the possibility exists. Parliamentarians thus have to do this on their own initiative. This means that parliamentarians have to seek permission in advance to visit. Some countries such as Latvia, "the former Yugoslav Republic of Macedonia" and Switzerland (at the cantonal level) grant the right to a specific parliamentary committee, commission or working group to visit places of detention on a regular basis".

appropriate analogous structures, whose remits shall be clearly defined and enshrined in law". According to the 2018 [draft principles on parliaments and human rights](#) ("draft principles") drawn up by the Human Rights Council, "a parliamentary human rights committee shall be given as broad a mandate as possible, covering all human rights defined in national and international law". It shall be defined according to "clear terms of reference setting out its purpose and goals". This should enhance the efficiency, accuracy and credibility of the work parliamentarians are aiming to achieve. Parliamentary structures established in accordance with these principles should also act to ensure prompt and effective follow-up to CPT recommendations.

35. Research conducted by the Assembly's Parliamentary Project Support Division (PPSD) in 2016 showed that many national parliaments had specialised human rights committees or sub-committees (including Albania, Bosnia-Herzegovina, the Czech Republic, Finland, Greece, Hungary, Ireland, Latvia, Montenegro, Romania and the United Kingdom); other countries took a "mainstreaming" approach, with all committees in principle competent to address the human rights aspects of issues within their mandate (for example Denmark, the Netherlands, the Russian Federation and Sweden). Some countries' parliamentary structures displayed a "hybrid" model reflecting both approaches (for example Armenia, Cyprus, Georgia, Germany, Italy and Lithuania). Several countries' governments systematically reported to parliament on judgments of the European Court of Human Rights concerning the State (for example Croatia, Germany, Hungary, the Netherlands and the United Kingdom).²⁵ A 2018 report by the PPSD revealed further progress over the period 2015-2017, with new parliamentary human rights committees or sub-committees being created in Armenia, Georgia, the Republic of Moldova and Ukraine.²⁶

36. The replies to the questionnaire also revealed that CPT reports are presented to specifically mandated parliamentary committees. Yet sometimes this is not sufficient to ensure appropriate scrutiny by parliamentarians. The Dutch parliament, for instance, informed me that while the government's response to the most recent report by the CPT had been on the agenda of the Standing Committee on Security and Justice, no member had raised concerns regarding the CPT report during the related debate. Furthermore, the 2016 report by the PPSD recalled that "despite the potential advantages of having a specialised human rights committee or sub-committee, there is a risk that leaving human rights scrutiny to a single specialised body may create a "silo" within parliament and discourage the integration of human rights and related rule of law issues into the work of other committees. Moreover, the mere existence of a specialised committee does not guarantee effective implementation; rather the effectiveness of such structures is dependent upon factors such as political will and the availability of expert legal advice".

37. Indeed, with these foregoing considerations in mind, the Assembly should continue to support national parliaments' important role in calling for the development of such structures if they do not exist yet in their member States and reinforcement when they do. Reinforcing such structures implies first and foremost, that national parliaments have the political will to make them function and that the remits of these structures are "clearly defined and enshrined in law" as indicated by the "Basic principles". I encourage in particular every parliament to ensure that CPT standards are actually included in these structures' procedures and mandate. For example, Mr Tugushi explained that the Parliament of Georgia had established specific mechanisms on the follow-up of the execution of judgments of the European Court of Human Rights, recommendations made by the United Nations treaty bodies and under the Universal Periodic Review. These mechanisms have facilitated the presentation and discussion of relevant government reports during hearings of the Legal Issues Committee and the Committee on Human Rights and Civil Integration. The Parliament of Georgia and other parliaments could consider including CPT recommendations within the same framework.

38. Specific general rapporteurs or focal points on CPT-related issues within such parliamentary structures could be designated from among members known for their competence in the field of human rights or having professional experience in the areas covered by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Training programmes and awareness-raising activities, providing access to external independent expertise, can be targeted at these specific structures and their staff. As mentioned by the 2016 PPSD report, the development of a professional parliamentary staff is particularly important as it "provides continuity between parliaments and ensures the creation of an "institutional memory" attached to the work of the parliamentary committees". The structures" would also become a more favourable terrain for engaging and consulting with NPMs, Ombudspersons and other similar bodies, international bodies (for example the CPT, the Parliamentary Assembly, the United Nations Subcommittee on Prevention of

25. "The role of parliaments in implementing ECHR [European Convention on Human Rights] standards: overview of existing structures and mechanisms – Background memorandum", [PPSD\(2016\)19](#), 31 October 2016.

26. "PACE activities implemented in the framework of the Partnership for Good Governance (PGG) in 2015-2017: Summary Report", [PPSD\(2018\)06rev](#), 19 April 2018.

Torture, etc.) as well as civil society representatives working on the prevention of torture. Issues related to the provision of sufficient financial and human resources to enable the structures to carry out their functions effectively should be discussed.

3.3. Opportunities for parliamentary co-operation activities

39. Peer-to-peer parliamentary support through a series of Assembly activities can prove to be very valuable to national parliaments' awareness of standards and tools on torture prevention. Such technical and policy assistance to their counterparts can support the establishment of parliamentary structures and mechanisms on the prevention of torture and protection of human rights. Peer-to-peer dialogue is furthermore a way to strengthen, in a co-operative context, political willingness and commitment towards the implementation of CPT standards and the follow-up to CPT recommendations.

40. The PPSD has been conducting various co-operation activities with the members and staff of national parliaments in recent years. These activities, as relevant to the present report, can be grouped into the following four categories:

- seminars for parliamentarians on the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment generally (for example in April 2016 in Strasbourg, in March 2017 in Borjomi, and in June 2017 and November 2018 in Budapest);
- seminars for parliamentarians on the role of parliaments in supervising the execution of Court judgments (for example in October 2013 in London, in February 2014 in Warsaw, in October 2014 in Madrid, September 2015 in Tbilisi and in April 2017 in Strasbourg);
- seminars for the staff of national parliaments on the Convention generally (for example in June 2012, September 2013, January and September 2014, March 2015 and September 2016, all in Strasbourg);
- seminars on parliamentarians' visits to immigration detention centres, followed by accompanied visits to such centres (for example in December 2012 in Strasbourg, in October 2013 in Zurich, in November 2014 in Calais, in May 2015 in Amsterdam (Schiphol) and in November 2016 in Vordernberg).

41. While all of these seminars cover issues which can be related to CPT recommendations, the PPSD should design activities which are particularly focused on CPT standards and recommendations and their implementation by national parliaments. It should be noted, however, that the current budgetary situation has forced a reduction in the Assembly's parliamentary co-operation activities. On 26 January 2017, the Bureau of the Assembly decided that co-operation activities would – in principle – be limited to those for which supplementary financing may be assured (via European Union joint programmes, voluntary contributions, including for specific projects such as parliamentary campaigns, etc.). Whilst some of the activities mentioned above were indeed financed by external sources, in particular the European Union, this consideration must be taken into account when discussing the possibility of future co-operation activities related to the current report. Outside donors, including the European Union and Council of Europe member States making voluntary contributions, should be encouraged to finance co-operation activities described here. The Assembly should invite the Committee of Ministers to ensure that the parliamentary dimension of co-operation activities, in conjunction with the PPSD, is included in the various programmes being financed and organised in relation to the implementation of CPT standards and recommendations by member States.

4. Conclusions and general policy recommendations

42. The long-standing recommendations made in CPT reports, along with the evident need for the Assembly to continue to address detention-related issues, show the importance of maintaining and enhancing efforts to prevent torture and inhuman or degrading treatment or punishment in Council of Europe member States. In this respect, national parliaments have the potential to play an important role. Whilst there has been significant progress made in developing the potential of national parliaments to act as human rights guarantors as regards human rights in general and supervision of execution of judgments of the European Court of Human Rights in particular, it is less clear that the same can be said for CPT recommendations. Given that the prohibition in all circumstances of torture and inhuman or degrading treatment, perhaps the most egregious of all affronts to basic human dignity, is a peremptory norm of international law, this is clearly an area where the moral imperative is strong.

43. The extensive work already undertaken on the role of national parliaments as guarantors of human rights shows that there are many promising avenues to be explored by which more could be done to ensure that CPT recommendations are better implemented by national authorities. The creation of new structures and mechanisms at national level in accordance with the Assembly's "Basic principles for parliamentary

supervision of international human rights standards” or a re-emphasis of the mandate and activities of existing structures and mechanisms, and more efficient monitoring and follow-up mechanisms, would help to achieve this. The Assembly’s parliamentary co-operation activities could include projects to support this specific function, as has been done to reinforce the role of national parliaments in supervising the execution of judgments of the European Court of Human Rights.