



African Commission for
Human and Peoples Rights



Association for the
Prevention of Torture



Amnesty International
Senegal

THE PREVENTION OF TORTURE IN AFRICA

Proceedings from the Regional Conference held in Dakar,
Senegal, on 27-28 April 2010



Table of contents

Table of contents	2
Main abbreviations	5
Acknowledgements.....	6
Foreword	7
General Introduction	9
1. OPENING CEREMONY	13
Speech of Mr Diéne Ndiaye, Vice-President of Amnesty International Senegal.....	13
Speech of Mr Mark C.A. Thomson, APT Secretary General.....	14
Speech of Mr Mahamane Cissé-Gouro, Regional representative for West Africa, Office of the United Nations High Commissioner for Human Rights	16
Speech of Ms Dupe Atoki, Chairperson of the Committee for the Prevention of Torture in Africa, Special Rapporteur on prisons and conditions of detention in Africa, member of the African Commission for human and people's rights	19
Speech of Mr Oumar Diouf, Magistrate, Deputy-Director for Criminal Affairs and Pardons, Representative of the Ministry of Justice of Senegal	22
2. PLENARY SESSIONS	25
2.1. How can the OPCAT make a difference in the Prevention of Torture?.....	25
2.1.1. Monitoring places of detention, a means to prevent torture and other forms of ill-treatment.....	27
<i>Concepts and use of preventive visits</i> , Mr Edouard Delaplace, ICRC, Geneva.....	27
2.1.2. OPCAT: A system of prevention of torture and other ill-treatment	32
<i>The SPT in action: SPT challenges and opportunities to be highlighted from its first visits to African regions</i> , Mr Zdeněk Hájek, SPT member	32
<i>Key criteria and pre-conditions for efficient NPMs</i> , Ms Suzanne Soukoudé-Fiawonou, Magistrate, Vice-President of the OPCAT Working Group, Togo	36
2.1.3. Participants' Discussions.....	40
2.2. OPCAT Implementation: general considerations.....	41
2.2.1. The need for a broad dialogue on OPCAT ratification and implementation.....	42
<i>The need for a broad dialogue and consultations on OPCAT and NPM designation</i> , Mr Zdeněk Hájek, SPT member	42

2.2.2. Consultations on OPCAT: best practice	45
<i>A fruitful campaign for OPCAT ratification and implementation in Senegal,</i> Mr Seydi Gassama, Amnesty International Senegal.....	45
<i>Creation of an OPCAT working group in Togo and prospects for OPCAT ratification,</i> Mr Denis Minekpor Kokou, Ministry for Human Rights.....	47
<i>Section 5 Committee of the South-African Commission for human rights and the path towards OPCAT ratification and implementation,</i> Mr Danny Titus, Commissioner of the South-African Commission for human rights.....	49
2.2.3. Participants' Discussions.....	54
2.3. OPCAT implementation: What options for NPM designation?	55
2.3.1. Tendencies and options for NPMs in Africa and elsewhere.....	56
Ms Audrey Olivier, OPCAT Coordinator, APT	56
2.3.2. The creation of new institutions	60
<i>The creation of the General Inspector of Places of Deprivation of Liberty in France,</i> Mr Jean Marie Delarue, Contrôleur général des lieux de privation de liberté, France	60
<i>Propositions for the establishment of a national observer for the prevention of torture in Benin,</i> Ms Marie-Gisèle Zinkpè, Magistrate, Ministry of Justice, Legislation and Human Rights, and Coordinator of the OPCAT working group, Benin	68
<i>The national observer of places of deprivation of liberty in Senegal,</i> Mr Oumar Diouf, Magistrate, Deputy-Director for Criminal Affairs and Pardons, Ministry of Justice, Senegal	71
2.3.3. Participants' Discussions.....	73
2.3.4. Designation of national human rights institutions as NPMs.....	74
<i>The role of the national human rights commission for human rights (HRCM) as NPM of the Maldives,</i> Mr Mohamed Zahid, Vice-President of the HRCM, Maldives.....	74
<i>The potential of the Commission for Human Rights and the Administration of Justice (CHRAJ) as NPM in Ghana,</i> Ms Anna Bossman, Commissioner of the CHRAJ, Ghana	79
2.3.5. Participants' Discussions.....	87
3. WORKING GROUPS.....	88
3.1. Working Group 1: Interaction between actors of torture prevention in Africa	88
3.2. Working Group 2: MNPs in action: How do NPMs work/how will they work? The functioning of NPMs.....	91
4. DAKAR PLAN OF ACTION.....	96

5. ANNEXES	101
Annex 1: Background Document	101
Annex 2: Status of OPCAT ratifications in Africa	109
Annex 3: Programme	110
Annex 4: List of participants	114

Main abbreviations

ACHPR	African Commission for Human and People's Rights
AI	Amnesty International
APT	Association for the Prevention of Torture
CPTA	Committee for the Prevention of Torture in Africa
ECCAS	Economic Community of Central African States
EU	European Union
HCHR	UN High Commissioner for Human Rights
ICTR	International Criminal Tribunal for Rwanda
NCHR	National Commission for Human Rights
NHRI	National Human Rights Institution
NPM	National Prevention Mechanism
OPCAT	Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
RIG	Robben Island Guidelines for the prohibition and prevention of torture in Africa
SRP	Special Rapporteur on prisons and conditions of detention in Africa
SPT	UN Subcommitee for the Prevention of Torture

Acknowledgements

The APT would like to thank Amnesty International Senegal for the fruitful cooperation that started in 2005 and for its mobilisation, which helped ensure the success of the Regional Conference on the Prevention of Torture in Dakar. The APT also extends its thanks to the African Commission on Human and Peoples' Rights for its work and the government of Senegal for its hospitality.

The APT expresses its gratitude to the resource persons who, despite their many responsibilities, agreed to devote some time to prepare and present the topics offered to them and thus contributed to the high quality of the debates, both in plenary sessions and in the working groups.

The APT would also like to extend its sincere thanks to Claudia d'Esposito who, between two missions with the International Committee of the Red Cross, volunteered her skills and motivation to help the APT, for the preparation and the logistics of the Conference.

The APT can not forget Ghislain Patrick Lessène, former APT Delegate to the African Commission on Human and Peoples' Rights, for his contribution to the drafting of this publication and Amanda Dissel, APT Delegate in South Africa, for transcribing the presentations of the Conference in English, as well as Anja Härtwig and Muriel Eckstein for editing this document.

Finally, the APT expresses its deep appreciation to the governments of Belgium, of the Netherlands and of the United Kingdom as well as to the European Union, whose financial support made the organisation of the Dakar Conference possible.

Foreword



In Africa, in recent years, the APT has partnered with various stakeholders to develop regional solutions based on international standards to prevent torture and other cruel, inhuman or degrading treatment. In this respect, the historic adoption of the Robben Island Guidelines for the prohibition and prevention of torture in Africa should be noted.

It is also in this spirit of stimulation and mobilisation of all available energies for a better prevention of torture that the Regional Conference on the Prevention of Torture, organised by the APT, took place in Dakar, Senegal, on 27 and 28 April 2010. Delegations from ten African countries attended the Conference. They included representatives of ministries, national human rights institutions and NGOs. International experts and national mechanisms of countries other than Africa were also invited to share their experiences and expand the networks of prevention. The objectives of the Conference were, among others, to promote the ratification and implementation of the Optional Protocol to the UN Convention against Torture (OPCAT). It was an occasion for rewarding and fruitful exchanges of experiences and best practices, which led to the adoption of a plan of action for the prevention of torture in Africa called the “Dakar Plan of Action”.

The Conference contributed to the impetus of a new dynamic in the field of the prevention of torture in Africa. In just a few months, the number of States Parties to the OPCAT in Africa went from 6 to 10, thus showing Africa’s commitment to the prevention of torture. Since the Dakar Conference, the national processes of ratification of the OPCAT or of designation of National Preventive Mechanisms (NPMs) have accelerated. Thus, for example, Burkina Faso, Togo, Gabon and the Democratic Republic of Congo have ratified the OPCAT while consultation seminars on the implementation of NPMs have been held or are planned in various countries including South Africa, Togo, Burkina Faso and Mauritius. Moreover, significant progress in developing national legislation for the criminalisation of torture have been recorded in Kenya, South Africa, Liberia and Uganda.

Moreover, in addition to these national initiatives, it is also encouraging to see a wider commitment to the issue of the prevention of torture at the level of the African Commission on Human and Peoples’ Rights (ACHPR). Indeed, its Committee for the Prevention of Torture in Africa (CPTA) increasingly endorses the role of creator of synergies between the various stakeholders for an effective prevention of torture in Africa.

However, the momentum and concrete measures for the prevention of torture reported in Africa in recent years, even in recent months, need to be strengthened. Indeed, as regards the OPCAT, Africa is entering a new crucial phase, that is, implementation. Ratification has yet to materialise into reality through the establishment and proper functioning of independent and effective national mechanisms, in accordance with the OPCAT.

To this end, the APT will continue to support the States, the NPMs, and other national stakeholders, by providing advice and technical support. It will also strengthen its

cooperation with the CPTA and involve it more in this dynamic for an effective prevention with an effective regional dimension.

The APT will also continue its engagement with all concerned stakeholders to promote exchange, cooperation and sharing of good practice, whether through the encouragement of open and participatory national processes, networking or the organisation of meetings/seminars and discussion fora between the different stakeholders.

Jean-Baptiste Niyizurugero
Africa Programme Officer
APT

General Introduction

The Regional Conference on the Prevention of Torture in Africa was held in Dakar, Senegal, from 27 to 28 April 2010. It was organised jointly by the Association for the Prevention of Torture (APT) and Amnesty International Senegal, together with the African Commission on Human and Peoples' Rights (ACHPR), under the auspices of the Ministry of Justice of Senegal. The Dakar Conference focused primarily on the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) as regards its ratification and its implementation, and also on the added-value of the OPCAT and detention monitoring in the prevention of torture and other cruel, inhuman or degrading treatment.

1. Status of ratification and implementation of the OPCAT in Africa on the eve of the Conference

The OPCAT, which was adopted by the UN General Assembly on 18 December 2002 and entered into force on 22 June 2006, introduces a novel system for preventing torture and ill-treatment based on regular visits to places of deprivation of liberty, carried out by international and national bodies.

At the international level, the OPCAT created the Subcommittee on Prevention of Torture (SPT). Created on 18 December 2006 and initially composed of ten independent experts, the SPT has been expanded to 25 members with the 50th ratification, as provided in Article 5 of the OPCAT. Following the elections of 28 October 2010, the SPT now includes two African experts, respectively from Burkina Faso and Mauritius.

At the national level, by ratifying the OPCAT, the States undertake to designate one or more prevention bodies, also known as National Preventive Mechanisms (NPMs). The preventive bodies of the OPCAT (SPT and NPM) have similar functions: they are called upon to make regular and preventive visits to all places of deprivation of liberty in order to propose recommendations and concrete measures to improve the system of deprivation of liberty and the conditions of detention. In addition, they present their observations and comments on relevant existing and draft laws.

At the time of the Conference in April 2010, six African States had ratified the OPCAT (Benin, Liberia, Mali, Mauritius, Nigeria and Senegal). Since then, four other countries (Burkina Faso, Gabon, the Democratic Republic of Congo and Togo) have ratified the OPCAT, bringing to 10 the number of African States Parties to the OPCAT, on 1 April 2011. Another 8 African countries (South Africa, Cameroon, the Republic of Congo, Ghana, Guinea, Madagascar, Sierra Leone and Zambia) have shown their interest for the prevention of torture and other ill-treatment by signing the OPCAT. At the date of this publication, on 1 April 2011, the OPCAT has 57 States Parties and 21 signatory States.

Regarding the designation of National Preventive Mechanisms at the Dakar Conference, four African countries had already nominated their NPM (Mali, Mauritius, Nigeria and Senegal), while draft laws were debated in Benin and Liberia.¹

¹ For further information, please refer to the APT's database on the OPCAT, available at : <http://www.apr.ch/opcat>

2. The Regional Conference on the Prevention of Torture in Africa

It is in this context that the Regional Conference on the Prevention of Torture in Africa was held. The conference brought together representatives from the six States Parties of the region at the time, and four of the signatories.² The delegations from the various countries included representatives from government ministries, Parliaments, national human rights institutions and NPMs. Among the sixty participants were also representatives of NPMs from other regions, UN human rights mechanisms, the African Commission on Human and Peoples' Rights, United Nations agencies, international organisations, regional organisations and civil society organisations.³

The main objective of the Conference was to revive the momentum for the ratification and implementation of the OPCAT on the African continent, through four specific objectives:

- promote the prompt ratification of the OPCAT in the signatory States. The actors engaged in the ratification process had to take stock of the situation regarding the ratification process and build on successful experiences in Africa and elsewhere to move this process forward in their states.
- promote, encourage and support an open and participatory process for selecting effective NPMs in States Parties, which do not have established NPMs yet, and this, through the exchange of good practices that have proved effective both on the African continent and in other parts of the world.
- promote the exchange of experiences and best practices on the establishment and functioning of NPMs in Africa.
- create a regional dynamic favouring interaction and cooperation between African NPMs, with NPMs from other regions, as well as with the SPT and the Committee for the Prevention of Torture in Africa (CPTA), a body of the African Commission on Human and Peoples' Rights (ACHPR).

To ensure the quality of the debates, a number of key documents on the OPCAT and the prevention of torture in Africa was made available to the participants, including:

- The situation of the OPCAT in Africa⁴;
- The discussion paper⁵;
- The situation of the ratification and of the implementation of the OPCAT in Africa, by country.

The methodology adopted for this two-day Conference was to mobilise the participants in order to:

- Take stock of the ratification processes under way in the States;

² South Africa, Benin, Burkina Faso, Ghana, Mauritius, Liberia, Mali, Nigeria, Senegal, Togo

³ List of participants in annex 4

⁴ See annex 2 (updated on 1 April 2011)

⁵ See annex 1

- Analyse the roles and interactions of the relevant actors in ratifying and implementing the OPCAT for a better synergy;
- Analyse the options available to the States for the designation of NPMs;
- Share good practices and experiences in ratifying and implementing the OPCAT;
- Analyse the criteria for designating NMPs;
- Create new synergies and strengthen and create new networks for the prevention of torture in Africa;
- Identify substantive recommendations to guide the African States in the process of ratification and effective implementation of the OPCAT.

To do this, priority was given to an interactive dialogue among the participants. The plenary discussions focused on general aspects of the OPCAT (detention monitoring, institution of a system for preventing torture and other ill-treatment, etc.), the options available to the States for the designation of NPMs (creation of a new specialised body or designation of an existing national institution as NPM), the experiences and best practices for ratifying and implementing the OPCAT (need for a broad and constructive dialogue including all national actors such as political authorities, parliamentarians and civil society).

The discussions that followed the presentations showed, firstly, the importance of a synergy between national actors for the designation of NPMs with a full functional and financial independence and safeguards that will give them credibility with the population, and secondly, the contribution of international actors in terms of expertise and advice in the implementation of the OPCAT.

Two topics were extensively analysed and discussed during working groups.

The first topic focused on the interaction between the actors in the field of prevention of torture in Africa. The discussions resulted in the identification of the actors at the national, regional and international levels, and the opportunities for interaction that can lead to the effectiveness of the OPCAT.

The second topic focused on the NPMs in action, including the essential elements of their functioning that will ensure the efficiency advocated by the OPCAT.

3. Results of the Conference

The first tangible result of the Conference is undoubtedly the adoption of the **Dakar Plan of Action**. The work achieved through the Conference led to the adoption of a series of substantive and technical recommendations called "*The eight points of the Dakar Plan of Action for the Prevention of Torture in Africa*", recalling the universal ban on torture and other cruel, inhuman or degrading treatment, as well as the need and obligation for actions in prevention. The Plan of Action sets out, in eight points, the relevant measures for the ratification and effective implementation of the OPCAT in Africa, and complements the actions of the Robben Island Guidelines adopted by the African Commission on Human and Peoples' Rights in 2002.

The Conference also helped to **revive the ratification process in the region**. Some national

players have decided to draw on the work of the Conference to identify strategies for the short, medium and long term and restart the ratification process in their countries. Thus, a few weeks after the Conference, Burkina Faso and Togo ratified the OPCAT. Then Gabon and the Democratic Republic of Congo followed their lead in ratifying the OPCAT in September 2010, on the sidelines of the 65th session of the UN General Assembly in New York.

The discussions that led to the adoption of the Dakar Plan of Action prompted the conclusion that the prevention of torture on the African continent requires a dual approach. On the one hand, we need a greater adherence of African States to the OPCAT and the implementation of other relevant texts such as the Robben Island Guidelines. On the other hand, we need a synergy, a concerted action by all stakeholders at national level (competent authorities, parliamentarians, national institutions, civil society) and international level (CPTA, SPT, NPMs from other regions, etc).

4. Publication of the work of the Conference

The Dakar Conference provided an opportunity for rewarding and fruitful exchanges of experiences and best practices among participants, including the ratification and implementation of the OPCAT. The APT considered useful and important to share, through this publication, the wealth of the work and discussions of the Conference with other stakeholders involved in prevention and who could not take part in this event, as well as with other interested stakeholders.

This publication is a compilation of the various contributions made by the experts on the various topics proposed by the Conference program. Each series of presentations by experts is preceded by a short introduction to each topic, and concluded with a summary of the discussions in the plenary sessions. The publication also includes a summary of the working groups and the Dakar Plan of Action adopted by the Conference.

The APT hopes that this publication will prove useful and may serve as a reference or inspiration for the authorities responsible for the questions of ratification and implementation of the OPCAT, the NPMs, the national human rights institutions, and other actors working not only in the specific field of the prevention of torture, but also in the field of human rights in general, in Africa and elsewhere.

1. OPENING CEREMONY

Speech of Mr Diéne Ndiaye

Vice-President of Amnesty International Senegal



The seminar we are attending today is part of the productive cooperation that has existed between Amnesty International-Senegal and the Association for the Prevention of Torture (APT) since 2005. Together with the APT and other organisations of civil society in Senegal, we have worked constructively with the government and parliament to achieve ratification of the Optional Protocol to the United Nations Convention against Torture in 2006 and the adoption in February, 2009 of the law establishing the Observer of Places of Deprivation of Liberty. The same partnership has prevailed during elaboration of the decree to implement the law on the Observer, a decree currently under study by the government and which we hope to see adopted within the next few weeks.

Although torture cannot be considered as a common or systematic practice in Senegal, it is nevertheless a reality in some police stations and gendarmerie brigades, and it has caused several victims in recent years. The judicial inquiries opened following deaths in places of detention are long and tedious, and, when finally terminated, are the object of controversy between the public authorities on the one hand and the victims' families and human

rights organisations on the other. In view of this, it is urgent that the government conform to the Protocol by adopting as rapidly as possible the decree implementing the law on the Observer, and by nominating to this function a dynamic and competent personality who has available adequate human and material resources.

We wish to affirm here and now our commitment to supporting the future Observer in the accomplishment of his mission of protecting persons in custody and to plead for the improvement of the conditions of detention in our country.

I would like to end by thanking the parliamentarians, deputies, and senators present in this room and who are our privileged partners in the work of promoting and protecting human rights. I would also like to thank the Keeper of the Seals and his collaborators, the Minister of Foreign Affairs, and the legal counsellor of the President of the Republic, Mr. Ousmane Kane, for their assistance.

Speech of Mr Mark C.A. Thomson

APT Secretary General



Welcome to the Africa Regional Conference on the Optional Protocol to the UN Convention Against Torture (OPCAT). We are honoured to have co-organised this conference with AI Senegal, in collaboration with the African Commission on Human and peoples' Rights and under the auspices of the Ministry of Justice of Senegal.

On behalf of the APT allow me to express our gratitude to all our partners for brining us here as well as the funders: the European Union, France, Netherlands and the United Kingdom for enabling us to afford the costs of the conference.

Finally, a very big thank you for all of you for dedicating your precious time and energy to this meeting. I certainly believe it is worthwhile you are here and if you need any convincing allow me to share a few observations on why:

1. The issue is particularly relevant

Torture remains one of the most widespread and serious of human rights violations in all parts of the world. However, torture and other ill-treatment can and must be prevented through measures we will examine at this conference and in a political climate where there is a will to reform our systems of detention.

2. The time is right to be meeting

Six African States have ratified the OPCAT and 10 have signed (and may soon ratify). 42 African States have ratified the UN Convention against Torture, in which Articles 2 and 16 call on states to take effective measures to prevent torture and ill-treatment. So far four National Prevention Mechanisms (NPMs) are starting to work in Africa.

The African Commission has re-launched, at the end of the last year, the work of its anti-torture body, the renamed "Committee for the Prevention of Torture on Africa" (CPTA), with the on-going aim of promoting the application of the African Commission's Robben Island Guidelines.

National Human Rights Institutions in Africa are giving more priority attention to their prevention role, as well as the Office of the High Commissioner for Human Rights and the United Nations development programme (UNDP).

3. This is the right place to be meeting

Senegal was one of the first to sign the CAT and the first country to sign the OPCAT. It was a driving force behind the African Charter on Human and Peoples' rights. Senegal was one of the first countries to establish an NPM.

4. The right approach

Our governments, institutions, organisations and ourselves all have a role and a responsibility to prevent torture and ill-treatment but we are also all partners in the same course. This conference aims to

strengthen cooperation and synergies and surely the right approach.

Let's be creative, let's find cost effective solutions to move forward with our individual and joint efforts in prevention.

5. The right mixture of people

The APT believes prevention is best achieved through a systematic and collaborative approach with all actors: United Nations (OHCHR and UNDP), Governments, regional mechanisms such as CPTA and African Commission, NPMs, NHRIs, NGOs both national and international.

So, I am pleased to see old friends such Alioune Tioune, Uju Agomoh, Malik Sow present. This is a life long struggle we've chosen and you can all rely on the APT to do whatever we can to assist you.

Now I invite you all to seize this opportunity to enter into the details of how we can advance on prevention in a way that Africa can be an inspiration for the rest of the world.



Speech of Mr Mahamane Cissé-Gouro

Regional representative for West Africa, Office of the United Nations
High Commissioner for Human Rights



On behalf of Madam the United Nations High Commissioner for Human Rights, who I have the honour of representing here, I would first like to welcome participants on the Senegal ground, but also to express my sincere appreciation to the organisers, that is, the Association for the Prevention of Torture (APT), Amnesty International Senegal (AIS) and the African Commission on Human and Peoples' Rights (ACHPR) for the honour that has been done to us by inviting the Office of the UN High Commissioner for Human Rights (OHCHR) to take part in this regional seminar on the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (OPCAT).

It is also with great pleasure that OHCHR attends such a meeting, bringing together so many experts of international repute, whose duty will be to share with the participants their extensive knowledge and experience in the field of the prevention of torture.

This event, the second of its kind in Africa, had already been organised in April 2008 in Cape Town, South Africa, by the University of Bristol, in partnership with the South African Human Rights Commission and the APT. The OHCHR, faithful to its mandate of advocacy, was represented at this important event by Mr. Bacre Waly Ndiaye and David Johnson, respectively Director of the Human Rights

Council Division and former head of the OHCHR Regional Office for South Africa.

Today, it is my turn to take part in this regional meeting. This is a way for OHCHR to show all the interest it gives to the concerns that are the prohibition and the prevention of torture. At this point, let me acknowledge the presence here of Mr. Zdeněk Hájek, a member of the UN Subcommittee on Prevention of Torture (SPT).

On 18 December 2002, the General Assembly of the United Nations adopted the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (OPCAT). This was a strong signal that the international community wanted to give of its commitment to the fight against torture.

The seminar that brings us together during these two days has set, among other objectives, to encourage an early ratification of the Protocol, to promote the opening of the procedures of designation of National Preventive Mechanisms (NPMs) and to encourage their efficient functioning upon establishment. These two goals, the ratification of the Optional Protocol and the effectiveness of the NPMs to be set up, are real challenges that the participants will have to take up.

In addition, this meeting will provide opportunities to share experiences on the functioning of NPMs and foster national regional and global cooperation for assistance in the prevention of torture, particularly with the National Preventive Mechanisms emerging in Africa and in the

Committee for the Prevention of Torture in Africa (CPTA) of the African Commission on Human and Peoples' Rights (ACHPR).

As you know, the Optional Protocol entered into force on 26 June 2006. It is hardly necessary to emphasize that this document is an instrument that is both important and unique in that it creates a monitoring system that relies mainly on two pillars: (i) the SPT consisting of international experts and (ii) one or several NPMs made up of national experts.

As concerns the first pillar, that is, the SPT, it is important to note that the African countries represent only 12% of all States Parties to the Optional Protocol. As presently constituted, there is no expert from the African continent. It is hoped that the forthcoming elections to be held on 28 October 2010 will result in the inclusion in this innovative mechanism of African experts.

During its three years in operation, the SPT has visited two African countries, Mauritius in October 2007, and Benin in May 2008. The SPT plans to visit Liberia in 2010.

It should be noted that the reports established by the SPT following the visits to States Parties remain confidential until the states concerned decide to publicise them. However, their release is generally encouraged because it contributes to a culture of transparency and could ultimately facilitate the increase of measures to prevent torture.

Also with respect to Africa, the SPT has established channels of cooperation with the ACHPR. Thus, the Chairperson of the CPTA, formerly the Robben Island

Guidelines Follow-Up Committee, Mrs. Dupe Atoki, participated in the June 2009 session of the SPT to discuss possible areas of cooperation, such as the sharing of information and the implementation of joint activities.

The SPT has also established working relationships and channels of cooperation with a number of international organisation or bodies working in the field of the prevention of torture in all places of detention. These include the International Committee of the Red Cross (ICRC), UNHCR and the World Health Organisation (WHO).

The second pillar of the monitoring system established by OPCAT is the NPM. It is an essential mechanism in preventing torture in places of deprivation of liberty but also in the implementation by States Parties of their commitments vis-à-vis the Protocol. Therefore, by developing the preliminary guidelines for the ongoing development of NPMs, the SPT also wanted to recall the importance of these NPMs, whose effectiveness should be justified by their independence.

These new monitoring mechanisms created by OPCAT are complementary to the mandates of other treaty bodies, such as the Committee against Torture (CAT) and the Human Rights Committee, as well as to the mandates of the Special Procedures, such as the Special Rapporteur on Torture (SRT).

The SRT and CAT can, by their on-site visits, share their experience with the SPT and the NPMs. Countries such as Cameroon, Jordan, Kenya, Nigeria and Togo have already received visits from the Special Rapporteur.

At the regional level, the work of the Special Rapporteur on Prisons in Africa, like that of the Committee for the CPTA are regional initiatives that are particularly important for the prevention of torture in Africa. Therefore, there is reason to hope that a dialogue and a fruitful cooperation between these regional bodies and the international and national mechanisms (SPT and NPM) will continue to grow.

I would like, before concluding, to discuss the challenges concerning the implementation of OPCAT in the African region. In this regard, let me cite at least two: (i) the challenge of the ratification and (ii) the establishment of NPMs.

As I mentioned earlier, only six (6) African countries have now ratified OPCAT. These are Benin, Liberia, Mali, Mauritius, Nigeria, and Senegal. Ten other African countries are signatories only. These are: Burkina Faso, Cameroon, Congo, Gabon, Ghana, Guinea, Madagascar, Sierra Leone, South Africa, and Togo¹.

Of the six African States Parties to OPCAT, four of them, namely Mali, Mauritius, Nigeria and Senegal have established an NPM against torture, as provided by Article 17 of the said Protocol. And there again it is worthwhile to draw your particular attention to the no less important question of the effectiveness of these NPMs.

So what can we do?

At this point, I would like to note that the National Human Rights Institutions (NHRIs), through the mandate assigned to them in accordance with the Paris Principles, could, among other things, play an important role in preventing

torture. Of course, OPCAT does not prescribe a particular model for NPMs, the function of which may be assumed by a National Human Rights Institution (NHRI) or any other suitable mechanism.

It is in this context that we must understand the Robben Island Guidelines (RIG), adopted by the African Commission at its 32nd session in October 2002. These Guidelines call on African governments to develop, promote and strengthen the independent National Institutions, such as the National Human Rights Commissions, whose mandate is to visit all places of detention and address the overall theme of the prevention of torture and other cruel or degrading treatment or punishment, in accordance with the Paris Principles on the status and functioning of National Institutions for the protection and promotion of human rights.

In this respect, we should welcome the recent establishment of the Secretariat of the Network of National Human Rights Institutions in West Africa (currently chaired by Senegal), used among other things, as a coordination body to strengthen the compliance of NHRIs with the Paris Principles. The network will play a key role in developing methodologies and in sharing good practices in the field of the prevention of torture in the sub-region.

The discussions you will have during these two days and the recommendations that result from your work may encourage States Parties to further commit to the prevention of torture in Africa.

¹ Togo recently adopted an OPCAT ratification law (ed.)

Speech of Ms Dupe Atoki

Chairperson of the Committee for the Prevention of Torture in Africa,
Special Rapporteur on prisons and conditions of detention in Africa,
member of the African Commission for human and people's rights



I am honoured to be able to participate in the first regional conference on the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading

Treatment (OPCAT) for Africa jointly organised by The Association for the Prevention of Torture (APT), Amnesty International Senegal and the African Commission on Human and Peoples' Rights (ACHPR). As Chairperson of the Committee for the Prevention of Torture in Africa (CPTA), it is a privilege to speak to you and to explore ways on how the CPTA and other human rights mechanisms created by the African Commission can collaborate with our various publics to protect victims of torture in places of detention or rather prevent them from becoming victims in the first place.

But before I continue, I will be amiss not to recognise the presence of Mr Mahamane Cissé-Gouro, Regional OHCHR Representative for West Africa, who is representing Ms Navi Pillay, the UN High Commissioner for Human Rights. We also have Mr Mark Thomson, Secretary General of APT and other members of the CPTA. We are also lucky to have with us Professor Malcolm Evans, an expert on penitentiary reform and torture prevention and who was recently elected as a member of the SPT, Mr Jean-Baptiste

Niyizurugero of APT and our many speakers and visitors. I would like to thank all of them for having given up time and making the effort to be with us today – to exchange experiences and good practices on the establishment and the functioning of NPMs in Africa and to support a broad and participatory process of designation of effective NPMs in the States Parties which have not yet established NPMs.

Over the past fifty years, the struggle against torture has become a central concern of human rights law. In fact, the first international legal text specifically outlawing "torture" was the 1948 Universal Declaration of Human Rights in Article 5. In 1984, the United Nations Convention against torture (UN CAT) became the first binding international instrument exclusively dedicated to the struggle against one of the most serious and pervasive human rights violations of our time. Following on its heels was the adoption of the African Charter on Human and Peoples Rights (ACHPR) in 1986 as the first Regional human rights instrument with binding implication on all African States Parties. Its Article 5 also prohibits torture, cruel inhuman and degrading treatment and punishment. The ACHPR enhanced and developed this article and came up with the Robben Island Guidelines on the implementation of the prohibition and prevention of torture in Africa (RIG). The Guidelines incorporate the three principles of prohibition, protection and rights of the victim.

Years later, after much struggle and with APT leading the way, OPCAT came into being as the first international instrument, which seeks to prevent torture and other forms of ill-treatment through the establishment of a system of regular visits to places of detention carried out by independent international and national bodies. These bodies are expected to make recommendations to governments to set up effective structures to prevent torture and ill-treatment and to improve the conditions of detention of all persons deprived of liberty.

But today and tomorrow is about us – Africa. One of the reasons we are here is to promote prompt ratification of the OPCAT in signatory States in the region. So how have we fared? Only six countries have ratified OPCAT – Benin, Liberia, Mali, Mauritius, Nigeria and Senegal. Ten others have signed but not yet ratified it. They are Burkina Faso, Republic of the Congo, Cameroon, Gabon, Ghana, Guinea, Madagascar, Sierra Leone, South Africa and Togo. Among the States Parties, only Mali, Mauritius, Nigeria and Senegal have designated their NPM. I understand that Benin will shortly do so as well. So there is a lot of work to be done to convince our state managers not only to sign and ratify human rights instruments, but also to live up to their commitments following thereof.

We are also here because we want to reinforce the fact that freedom from torture is an inalienable human right. The UNCAT and RIG, adopted by many African States, forbid governments from deliberately inflicting severe physical or

mental pain or suffering on those within their custody or control. Yet we know that torture continues to be practised around the continent by some regimes and institutions whose cruel methods match their determination to crush the human spirit. Beating, burning, rape and electric shock are some of the grisly tools used to terrorise their own citizens. These despicable crimes cannot be tolerated by a region committed to justice.

This first African conference marks almost four years since OPCAT came into force on 22 June 2006. That was a watershed moment for all of us in the human rights movement, because it marked the height of the international community's struggle for the prevention of and protection against

“... there is a lot of work to be done to convince our state managers not only to sign and ratify human rights instruments, but also to live up to their commitments following thereof.”

torture. But it did something more. It aimed to create a method of global prevention of acts of torture through a dual system of an international body and national bodies, thus, providing a mechanism which is able “to cover as much ground” on the globe as possible. This should be facilitated by the fact that the national bodies are permanently present in the countries which ratify the OPCAT, and may hence conduct more frequent visits to detention facilities.

So, it is time to look back and see what has been achieved and plan for the future. For example, this conference will be looking at the challenges since OPCAT came into force. The reality is, as I see it, the success of the OPCAT hinges on the success of National Preventive Mechanisms which State Parties are required to establish within a year of ratification. There is no standardised structure for the NPMs. Its fluidity allows the accommodation of

existing structures or the establishment of new ones. What challenges will this lack of standardising pose in Africa, how should these visits be carried out in the light of peculiarity of overpopulation in African prisons? These issues agitate my mind and I hope attempt will be made to address them.

As the Chairperson of the CPTA, I am especially interested in the interface between the RIG and the OPCAT and its Sub-committee (SPT). Such collaboration between the SPT and the CPTA should be aimed at joint studies, missions, country visits, research and workshops. Exchange of information, material and human resources and training for Committee members and staff will also be key ways of collaboration between the SPT and the CPTA.

Another issue that hopefully will be addressed is the role of NGOs and National Human Rights Institutions in providing logistical support. They are expected to provide supplementary aid such as training to judges and advocates and engaging in research and studies. They will be encouraged to bring cases to Court on behalf of individuals within the State, to the African Commission and the African Court on Human and Peoples' Rights as well as thoroughly monitor the proper use of the law in the criminalisation and punishment of torture.

An important focus of the CPTA in this regard will be to train human rights advocates, lawyers and investigators on how to monitor, litigate and investigate allegations of torture.

As Chairperson of the CPTA, I must say that I am happy to be in Dakar and glad to be among friends, despite a difficult personal loss I am currently going through. During these two days of deliberations, I am sure we will explore

means on how the CPTA can collaborate with the various mechanisms to prevent torture to protect victims of torture in places of detention or rather prevent them from becoming victims in the first place. The African Commission will continue to monitor events on the ground. It will, for example, monitor the progress of States in implementing the RIG Guidelines through the State Reporting Mechanism, CPTA Missions, Promotion Missions of Commissioners and Reports of the African Commission to the Assembly of Heads of State and Government of the African Union.

This conference presents a special occasion to come up with concrete proposals. The real human rights challenge we face is the practical application of commitments undertaken. Many African countries have ratified a number of regional and international human rights instruments with obligations for implementation. It is time to examine the report cards. I hope that at the end of two days of deliberations, we will be able to adopt a set of substantive and technical recommendations, which will form a road map to guide States in the setting up of NPMs. We will hope that the recommendations will also be used as a tool for advocacy and dialogue by national, regional and international actors including within political and economic sub-regional institutions.

After these initial reflections, let me express how highly I value this unique forum, where Africa and its partners, in an informal setting and as friends, can discuss issues of common concern. I hope that through frank and open discussions today and tomorrow we will come one step closer to creating a world where torture, cruel, inhuman and degrading treatment and punishment becomes an instrument of the past.

Speech of Mr Oumar Diouf

Magistrate, Deputy-Director for Criminal Affairs and Pardons,
Representative of the Ministry of Justice of Senegal



It is my honour, in place of the Minister of State, Keeper of the Seals, and Minister of Justice, who was unable to attend, to preside over the opening ceremony of your regional seminar on the OPCAT in Africa.

punishments" in places of detention other than prison establishments. To remedy this situation, it appeared necessary, taking into account the provisions of the above-mentioned Protocol, to create a national mechanism for the prevention of torture, called the "National Observer for Places of Deprivation of Liberty."

This independent administrative authority has as its mission:

This important meeting comes at a critical moment and is of major interest because it further develops the discussion that took place during a similar conference organised in Strasbourg last November.

Senegal, a country with a long tradition of respect for human rights, after having ratified the OPCAT on 18 October 2006, wished to conform to its international obligations. It thus recently established a National Observer for Places of Deprivation of Liberty, for which the rules of organisation and functioning are set out in a decree currently introduced into the administrative circuit for visas.

The purpose of most of the mechanisms established up to now, notably Laws N°200-38 and 2000-39 of 29 December 2000 and Decree N°2001-362 of 4 May 2001 relative to procedures for the execution and administration of penal sanctions, was to ensure respect for the rights of prison inmates, but also to favour their reintegration into society.

It was not possible under this system to prevent acts of "torture and other cruel, inhuman or degrading treatments or

- To visit at any time any place on the territory of the Republic of Senegal, or under its jurisdiction or control, in which there could be persons deprived of their liberty on the order of a public authority or at its instigation or with its express or tacit consent, as well as any health facility authorised to receive patients hospitalised without their consent;
- to submit advice and recommendations to the public authorities;
- To propose to the government modification of any pertinent legislation or regulation.

The National Observer for Places of Deprivation of Liberty is the privileged interlocutor of the SPT.

During parliamentary debates, the senators and deputies engaged in a discussion, during which a certain number of questions were raised. Among these questions were the following:

- Are we not in a process of multiplying institutions, with the risk that they may not function correctly?

- Which Minister is referred to under Article 7 of the law creating the Observer?
- How can we ensure that the recommendations of the Observer are taken into account?
- The fact that the Observer should be an independent person is a good thing. Can one also hope that this person will be a woman?
- Were the proposals made by certain NGOs taken into account in the draft law? Especially in view of the fact that certain NGOs had voiced their preference for the term "Controller" instead of "Observer?"
- What should be the method of nomination of the Observer and delegate-observers?

In response to the questions raised, the Minister of State, Minister of Justice and Keeper of the Seals notes that the National Observer for Places of Deprivation of Liberty is an independent personality who can be appealed to even by the government.

The Observer's activity report is public and can also be published by the media. According to the Keeper of the Seals, as an authority the Observer engages his responsibility before man and before God.

The Keeper of the Seals explains the preference for the term "Observer" by a desire to avoid confusions of a semantic nature and notes that only the President of the Republic may, at his discretion, decide if a woman can be named Observer.

According to the provisions of Law No. 2009-13 of March 13, 2009, the National Observer for Places of Deprivation Liberty is appointed by decree on the basis of his competence and professional knowledge for a 5-year, non-renewable term. He may

not be prosecuted, subject to pursuit, arrested, detained or tried as a result of the opinions he voices or the acts he accomplishes in the exercise of his functions.

The Observer's functions cannot be terminated prior to the expiration of his mandate, except in the case of his resignation or inability to continue.

The functions of the Observer are incompatible with any other public employment, any professional activity, and any elective office.

After having informed the responsible authorities, he can make public his opinions, recommendations or proposals, as well as the observations of these authorities. The Observer prepares an annual report, which is submitted to the President of the Republic and is made public.

The Observer can cooperate with other competent international organisms that have the same missions.

Review of the situation up to the establishment of the Observer

Since 1965, Senegal has adopted legislative measures to prevent and combat abuses committed by agents or officers of public law enforcement against the physical integrity of persons deprived of liberty.

Statistics show that the majority of these cases of abuse have been committed by officers of the judiciary police (OPJ) in the framework of investigations.

The code of criminal procedure offers to victims of abuse by officers of the judiciary police (OPJ) during custody the possibility of appealing directly to the Indictment

Division of the Court of Appeal, a body surveying the activities of all OPJs, in order that it verify and sanction these abuses.

It should be recalled that previously only the General Prosecutor at the Court of Appeal was able refer cases of abuse to the Indictment Division. This measure has preventive and dissuasive value to the extent that the Indictment Division can revoke an OPJ's status, depriving his mission of all substance.

The last stage in establishing the mechanism preventing violence against persons deprived of their liberty is marked by the adoption of Laws 29-2000 and their decrees of application, relative to the methods, procedures, and administration of punishments.

As for the physical quarters serving as places of detention, their examination reveals that they are insufficient and cramped.

Despite the efforts undertaken by the state, the overall situation affecting detention, as is the case in every developing nation, does not yet conform to international standards for modern penitentiary systems.

Challenges arising from the creation of a new institution

The creation of the office of Observer poses several challenges.

For the penitentiary administration, and in a more general way for all state services entrusted with executing measures that deprive individuals of their liberty, the primary challenge is to improve conditions of detention so as to avoid abuses being committed in the first place,

a situation that results in sanctions and tarnishes in large measure the image of our country.

The second challenge has to do with the penitentiary administration itself, which must have the capacity to receive the Observer and his delegates, who can then proceed to collect information from persons in detention who claim to have been victims of abuse.

In addition to these major challenges, the process of ratification and application must be completed, as well as the eradication of abuse of persons deprived of their liberty, with a view to ensuring their prompt reinsertion into normal social life.

I remain convinced that your discussions will result in conclusions and recommendations permitting Africa in general, and Senegal in particular, to advance resolutely on a path that reinforces the promotion and protection of human rights.

In the name of the Minister of State, Keeper of the Seals, and Minister of Justice, I declare opened the Regional Conference on the OPCAT in Africa, and thank you for your attention.

2. Plenary Sessions

2.1. How can OPCAT make a difference in the Prevention of Torture?

The question of the added value of the OPCAT is essential because it makes it possible to measure its scope in relation to other national, regional and international legal instruments related to places of deprivation of liberty. It is for this reason that the Conference focused on various general aspects of the OPCAT, particularly detention monitoring and the system of the prevention of torture and other ill-treatment.

The analysis of *detention monitoring as a means to prevent torture and other ill-treatment* enabled the participants to become familiar with the concepts and usefulness of the preventive visits recommended by the OPCAT. The Conference provided an opportunity to explore the concept of preventive visits, their main characteristics, their impact on the prevention of torture and their complementarity with other types of visits to places of detention.

The issue of preventive visits to places of detention in Africa was discussed in connection with the OPCAT. It enabled participants to analyse the mechanisms of the ACHPR, which are intended to exert a preventive mandate, including the role of the CPTA in promoting the OPCAT and its cooperation with the SPT and the African NPMs.

The study of *the system of prevention of torture and other ill-treatment* also revolved around the preventive mandate of the SPT and the requirements for the establishment of effective NPMs in Africa.

The essential elements of the preventive mandate of the SPT and the challenges it faces, four years after its starting date, were discussed with particular emphasis on the technical assistance that it is required to provide to the States Parties to the OPCAT regarding implementation of NPMs on the one hand, and to the NPMs themselves to ensure their effectiveness, on the other hand.

Moreover, the experiences and good practices from visits to places of deprivation of liberty by the SPT in eight States Parties, including Benin and Mauritius, made it possible to identify the achievements, but also the difficulties to be overcome during preventive visits. The importance of the reports and recommendations for the improvement of detention conditions as well as the monitoring of their implementation were stressed.

An effective NPM requires compliance with the criteria and conditions that are clearly determined by the OPCAT. These were highlighted at the Conference. Also highlighted were the need for a clear definition of the places of detention, a better understanding of the functional and financial independence of the NPMs, a multidisciplinary and balanced member composition (compliance with gender issue), and the recognition of guarantees and powers sufficient to accomplish their mission (e.g. unrestricted access to places of detention, people and information).

The various presentations were followed by stimulating discussion on the role of civil society in the field of preventive visits, the main obstacles that may block the effectiveness of visits to places of detention, the functional and financial independence of the NPMs to ensure their credibility with the stakeholders and the population, and various forms of cooperation to be maintained by the NPMs and other actors (SPT, CPTA, other NPMs, etc.)



2.1.1. Monitoring places of detention, a means to prevent torture and other forms of ill-treatment

Concepts and use of preventive visits

Mr Edouard Delaplace, ICRC, Geneva



On behalf of the International Committee of the Red Cross (ICRC), I would like to thank the organisers of this Conference.

It is very reassuring for the ICRC to see such a dynamic develop around the prevention of torture globally and in the African regional context. This is further proof that, on this continent as elsewhere, the struggle against torture and the treatment of detainees continues to be a subject of concern and this can only be welcomed, as indifference is our worst enemy in this battle.

For the ICRC, it is very important to understand and support these global, regional and national dynamics.

The organisers asked me to give an overview about the concepts and usefulness of preventive visits. This presentation will thus focus on four key words that characterise visits: transparency, protection, understanding and dialogue.

Transparency

The first keyword is **transparency**. Transparency is probably the essential purpose of monitoring. It is because torture and abuse always happen behind closed doors, that it is important to open those doors.

It is when the doors are closed that anxiety begins, for the prisoners who are cut off from the outside world, for their loved ones and more generally the community, who do not know what happens once those doors closed.

To open these doors is to prove to the detainees that the outside world does not forget them and sees what is happening in places of detention. But this openness, this transparency is not an end in itself. It should be a tool to be able to act in a better way.

However, before it turns into action to change the situation, the visit is primarily a *symbol* for people deprived of their liberty. Whether you have an international visiting mechanism such as the ICRC or a national mechanism that can enter in places of detention, it is proof that you are not alone, that there are people outside who care about you and who will speak for you, and that the rules you know will be applied to you. This visit also represents an opportunity to put an end to the exclusive relationship that exists between the detaining authorities and the detainee. It is precisely because of this isolation that a dynamic is created, which can be positive but also negative. Everyone has a particular role and it is sometimes difficult to create something positive after that for persons deprived of their liberty. Having someone intervening from the outside is positive.

Now, having an external perspective is a good thing, and entering a place of

detention is obviously a good thing too. But there are some conditions, which I think we'll discuss a lot during this Conference, so I will not dwell too long on them now. But, of course, there is the question of *independence*, which plays a fundamental role. If the body that enters the place of detention is not an independent body, if it depends directly from the administration in charge or if it is known that its recommendations will not in anyway be considered or if they are complacent with the authorities, I would almost tend to say that it is perhaps not worth having a visiting mechanism. This independence is really a very important element for the effectiveness and usefulness of detention monitoring.

Then there is also the question of the *methodology* of the visit. Here, I refer you to all the publications of the APT on how to visit a place of detention, without elaborating any further. But a visit is not simply about entering a place, have a quick look at the cells, and then go out. Making a visit to a detention facility responds to a particular methodology, if one wants to have an impact. That means meeting the authorities, having the opportunity to interview the detainees, having the right to visit all the cells and the whole place to make sure nothing is hidden from us. For the ICRC, there are more specific modalities, such as the right to repeat visits and the right to register the detainees in order to establish a system of individual monitoring and to strengthen the protection of individuals. So much for the importance of transparency in monitoring, which is one of the essential purposes of detention monitoring.

Now we must be cautious, and we will probably address this issue in the coming days, about the *impact* of the visits on the occurrence of torture and ill-treatment.

Certainly it is not a visit to a place of detention, or even several visits, which will have a direct impact on abuse. It is extremely rare that a visit is sufficient for torture and abuse to stop. Rather, the opening of the places of detention and the visits should be understood as the beginning of a long process, the outcome of which is uncertain.

Protection

The second key word I chose is **protection**. The Optional Protocol refers to "visits to places of detention," while the ICRC says "visits to *persons deprived of their liberty*." It is a small semantic difference, but it is a real difference. I think it is more question of wording during negotiations than anything else. But we should not forget that a visit to a place of detention is first and foremost a visit to persons deprived of their liberty. What we seek above all when we make these visits is to protect these people.

As I said before, a visit will not have an immediate impact on an individual. But it is important that the individuals remain at the heart of our concerns when we are making visits. The prisoners themselves tell us that it is important that we come and talk to them, and that we bring humanity to them. What is important for the prisoners is the time we will be able to spend with them to hear their stories, listen to the treatment they were subjected to and try to understand why they suffer. The hour spent in private with the detainee will not improve his fate immediately, but it will bring real support, and this should not be overlooked.

To protect also means to provide assistance, clean clothes, soap, and material to help the individuals regain their dignity if they have been subjected to ill-treatment. Then, and more specifically

for us at the ICRC, protection is about individual recording and tracking of the detainees, to ensure they do not disappear or are not again subjected to ill-treatment, that they can be followed from one place of detention to the other, so as to know what happens to them. The attention given to them is also proof that they continue to exist as human beings, as beings worthy of attention. And this is also very important. I think we need to keep that second key word – protection – in mind, as it is an important moment of the visit and of detention monitoring.

Understanding

The third key word is **understanding**. To influence a system, one must understand it. Whatever happens, whatever the regime in question, be it repressive or liberal, torture never happens by chance. It is extremely rare. Torture responds to a number of factors, which may be individual, collective, socio-economic, cultural, etc. It is very important to understand these factors to try to act and have the maximum impact later on when working with the authorities.

First of all, it is really important to understand *the sufferings of the detainee*. I have already said this when I talked about the protection of detainees: we spend time with the prisoners to understand their history and why they suffer. The authorities might establish a perfect system, but this system might not correspond at all – and this, for a number of reasons – to the way the detainees feel. Therefore, it is really important to listen to the detainees and understand whether they suffer from such or such particular organisational aspect of the prison - not to mention ill-treatment - but access to outdoors, contact with the family, etc. These feelings can be individual feelings, which must be taken into consideration.

We must try to understand why certain prison conditions may be a cause of suffering for the detainees.

It is also important to understand a particular *place of detention*. As a National Preventive Mechanism (NPM), as a national human rights institution, or for the ICRC, one must understand the dynamics of each place of detention, every police station, gendarmerie or prison. In each location, there is a different dynamic, which depends on various elements: the staff, the hierarchy or the immediate surroundings of the prison. The visiting mechanism must take into account the specificities of the place of detention. This can apply to a specific location, or a group of places. There might also be a pattern or practice of ill-treatment in the police station or in the gendarmerie, and not at all in other types of places of detention. One must also be able to analyse this. Ill-treatment might occur mainly in a particular province. We must be able to understand why this is happening in this particular province and not in others and try to understand the reasons for the occurrence of these phenomena.

We must also understand *the detaining authorities*. Previously, I focused on the detainees in detention monitoring. But we must also understand how the detaining authorities work, what kind of pressure they are subjected to on the part of the hierarchy, what forms of political or outside pressure they are subjected to. Also, it is simply about how the staff works, what kind of training they receive – in the case they are trained - what kind of salary they receive. We can try to understand how they work, what problems they face and how these problems have an impact on the treatment of detainees.

We must also understand *the political authorities*: at the ministerial level, the executive authorities, the legislative authorities – which were mentioned earlier - and then the judiciary authorities. Everyone has a responsibility to provide guidance and orders, and to establish an environment that is conducive to the prevention of torture. We must try to understand what commitments they have made – publicly and not publicly – what was said and how this is perceived by the detaining authorities, so as to see how, as a visiting mechanism, you can have an impact on these authorities.

And finally, we must try to understand *the environment*. As we said earlier, torture does not happen by chance. We must try to understand what is the regulatory environment, what is the legislation, what international instruments have been ratified and to what extent they are implemented at the national level. The institutional environment: what other mechanisms exist. The NPMs do not intervene in an institutional vacuum. Some NGOs may already visit some places of detention, the ICRC or the Special Rapporteur on Torture may also already be making visits. How do we integrate and how do we work with the existing mechanisms? There is also the ethical environment: how is the absolute prohibition of torture perceived? How is it experienced by the population as a whole? Is it obvious or is not as simple as that? These are also elements that must be considered in our work.

This is where, in my opinion, the NPMs under the OPCAT have an enormous and quite exciting potential in terms of impact. You, the NPMs, are there, in the country, permanently. All the elements related to the question of understanding listed above are thus fairly obvious to you. Maybe not

on an everyday basis, maybe not in all the places of detention, but in any case, much more than for the international mechanisms. This allows the national mechanisms to have an understanding of the situation that is as streamlined as possible, and to propose the most effective solutions.

Dialogue

The last key word I have chosen is **dialogue**. You cannot make prevention of torture 'against'. This does not work. We may denounce against, we may make public appeals, we may publish, we may issue press releases for which we do not need the cooperation of the authorities. But for the prevention of torture, we need the cooperation of the authorities. Thus, we cannot do it everywhere. But in any case, we must try, from the beginning, to involve the authorities in the whole process. We must explain to them what is their interest in engaging in a preventive approach. For them to accept this preventive approach - particularly in view of the OPCAT – for them to understand why it is important to have an effective national mechanism, and why it is important to assess the institutional, financial or personal independence. Because, as authorities, they have an interest in having an efficient NPM, as it will provide them with solutions to the problems against which they want to work. It is important to explain to them how things work, to ensure they engage with you, for them to change their practices, to provide the detaining authorities or the persons responsible with information or aid, so as to truly improve the situation. This dialogue is very important. I think it is new in the field of the protection of human rights, but it is extremely promising, as Mark Thomson said in his introduction.

To conclude, I would maybe just like to say that it is clear that monitoring and access to persons deprived of their liberty is not an end in itself. Certainly, this is a very positive development and it has the impact we mentioned. But to simply enter a place of detention is not enough if we are to truly prevent torture and other ill-treatment. You really need to take this as an additional and effective means in the prevention of torture and as a creator of dynamics. Having followed the process of implementation of the OPCAT in a number of countries during my previous responsibilities with the APT, I can testify that, yes, it creates a dynamic. The Conference that takes place today and all the national dynamics that you represent here are proof that this whole discussion around the establishment of visiting mechanisms creates a momentum around the prevention of torture, which is, in the long run, particularly beneficial for the people deprived of their liberty.

2.1.2. OPCAT: A system of prevention of torture and other ill-treatment

The SPT in action: SPT challenges and opportunities to be highlighted from its first visits to African regions

Mr Zdeněk Hájek, SPT member



The University of Bristol together with the South African Human Rights Commission and the collaboration of APT and other partners organised a conference on challenges of OPCAT implementation in the African region in Cape Town two years ago.

At that time it was noted that a very few states had ratified or signed OPCAT in the African region. Only 5 had ratified: Benin, Liberia, Mali, Mauritius and Senegal, and 8 others had only signed: Burkina Faso, Ghana, Guinea, South Africa, Togo, Gabon, Madagascar and Sierra Leone. Remember the numbers: 5/8.

Two years later the numbers are 6/10. Nigeria has signed and ratified and the Republic of Congo and Cameroon signed the OPCAT.

To be fair: As far as I know the ratification process is well advanced in 4 signatory states: Burkina Faso, Ghana, South Africa, Togo, perhaps more. Still: How many states is the African region composed of today? – 54. This means that only every 9th African State is a party to OPCAT and altogether less than one third has shown tangible interest to join the OPCAT family...

Two years ago in Cape Town it was also stated that even once ratification of OPCAT was achieved, its implementation did not necessarily follow. What is the situation today? Four States Parties have designated their NPMs – and we will certainly speak about their functioning and experience, and a few others are about to do so or are considering what and how to do it – and we will certainly speak about their projects and problems.

Should we be satisfied?

Is it still the way it was stated after the Cape Town conference, when there was a general lack of awareness of the content of OPCAT within governments and relevant national bodies and within the public?

What are the reasons for this state of affairs? What can we do and what more can we do?

It is for sure that persons deprived of their liberty throughout the region are in need of strengthening their protection against torture and other forms of ill treatment!

But again – to be fair, I believe that there will be optimistic information presented by participants during this conference.

Mandate of the SPT

The mandate of the SPT covers three basic areas.

The first relates to conducting visits to places of detention.

The second outlines the role of the SPT in achieving the establishment and proper functioning of NPMs.

The third aims at cooperation with other relevant UN mechanisms and also with other international, regional and national institutions and organisations, with all actors that are engaged in the field of combating torture and ill treatment.

What is the situation now?

The OPCAT came into force in June 2006 and there are 50 States Parties to the OPCAT at the moment.

After its first years of existence, the SPT points out that there is still much left to be desired as far as the proper functioning of the new system is concerned. The resources available are very limited and that is the reason why only 8 visits to States Parties have been conducted up to now. This also explains why the role of the SPT related to the establishment and proper functioning of NPMs can generally only be realised with the help and support of various international and regional organisations and institutions – such as the APT, Prison Reform International, Amnesty International, the EU, to name just some of them.

Operational mandate

The visits of the SPT to places of detention - and similarly visits conducted by NPMs - are not intended just to find problems and shortcomings and to criticise and blame States Parties. The visits should not be considered just as monitoring of detention

or even a sort of controlling and inspecting of the places either. It would be a wrong interpretation of the nature of visits. Regular visits are the basis of non-judicial means of a preventive nature. The whole concept of OPCAT is based on prevention. Of course the presence of the bodies itself in places of detention has a significant preventive function, but it is still rather fact-finding, the starting point of the process. The aim of the visits, among others, is to gather a true picture about the reality and existing problems and shortcomings and about legitimate needs of persons deprived of liberty, but not only that.

The SPT (as well as NPMs) should recognise the reality but also identify the reasons and root-causes of the problems, analyse them and come to conclusions as to what remedies, changes and improvements can and should be made. The aim of the operational work is to address the State Party and its authorities a report with credible and substantiated

“The relations among SPT, NPMs and States Parties should be seen as active simultaneous interaction of partners based on cooperation among them.”

recommendations and, if necessary, also with proposals and observations concerning existing or draft legislation and to enter into a constructive dialogue with the State Party

on possible measures of implementation.

The relations between SPT, NPMs and States Parties should be seen as active simultaneous interaction of partners based on cooperation among them.

Advisory mandate

The same triangular pattern is projected similarly in the advisory role of the SPT. The SPT should – if necessary – advise and

assist States Parties with the establishment of NPMs and then address States Parties' recommendations with the aim to strengthen the capacity and mandate of NPMs.

At the same time, the SPT should be in contact with NPMs and offer them training and technical assistance. It should also advise and assist NPMs on how to properly recognise needs and to evaluate what and how it should be done in order to strengthen the protection of detainees. I will speak about this role of the SPT in more detail in due course.

Cooperation

The SPT cooperates and will certainly cooperate with all actors that play a role in the field of protection of persons deprived of their liberty. It is already now in contact with most relevant regional bodies in Africa. As specifically stipulated in Article 31 of OPCAT, the SPT and bodies established under regional African conventions instituting a system of visits to places of detention will consult and cooperate to avoid duplication, but at the same time to support each other and to promote the goals of OPCAT effectively. To tell the truth, also here more could and should be done.

Perspectives

Up to now the SPT has conducted two visits to African countries – to Mauritius and Benin – and this year it is going to carry out a visit to Liberia. One could say that the ratio could be seen as optimistic: half of the States Parties to the OPCAT in Africa will have been visited by the end of this year. It is sad that this is just

misleading statistics, taking into account the very low number of African family members to the OPCAT.

The SPT would like to encourage other African states to finalise the ratification of the OPCAT and those who are still at the beginning to speed up the procedure. Similarly the States Parties that still have not designated their NPMs are very warmly invited to do so soon.

“The SPT would like to encourage other African states to finalise the ratification of the OPCAT and those who are still at the beginning to speed up the procedure.”

The SPT also strongly believes that its composition will be strengthened by elections of new members from African countries later this year. As

you know, there are 10 members to the SPT now and as a result of the ratification of the 50th State Party the number will raise to 25.

Until today, the SPT did not have a member from the African region. Therefore it is likely that there will be a chance for a good candidate from the current African States Parties to OPCAT to join the body during the upcoming elections.

Visits of the SPT to Africa

At the end of this presentation I would like to say something more about the first two visits of the SPT to the African region.

The first one – to Mauritius, was chosen by a lot as prescribed for the first three countries to be visited under OPCAT. It was historically the first visit of the SPT and was realised in October 2007.

The second visit to the region, to Benin, took place in May 2008.

Reports from the two visits are unfortunately still not in the public domain.

As you know there are two basic principles in relations between the SPT and States Parties namely cooperation and confidentiality. It is for the States Parties to request the publication of the report, together with responses and comments.

Of course, it is highly desirable, that reports of the SPT are in the public domain so that the process of implementation of recommendations is transparent. Other relevant actors – civil society and NGOs can also follow and contribute.

Up to now reports of the SPT from its visits to the Maldives, Sweden and Honduras have been published.

It is obvious that I cannot present any detailed information from the unpublished reports to the two African states visited.

Press releases were published after the visits with basic information – the composition of the delegation, authorities and other actors met, as well as a list of places visited.

Perhaps I can mention the usual structure of an SPT report in general.

One of the first parts of the report relates to the development of NPMs in the country. If established, the SPT deals with compliance of their establishment and legal anchoring with OPCAT requirements, points out its reservations and doubts and reiterates the OPCAT

provisions and SPT preliminary guidelines. It also makes concrete recommendations and requests information on further steps to be made.

The report of the SPT then describes the legal and institutional framework of the country and formal safeguards against ill treatment and deal with legislation, regulations and instructions, especially with the system of complaints, monitoring and legal aid assistance for persons deprived of liberty.

Next is the part describing the situation of persons in the places of detention visited. Of course, you would also find concrete recommendations for improvement of the situation of detainees in the reports.

The report also points out the level of cooperation with the State Party, whether the SPT was provided with all information requested and whether it was in a position to carry out the visit in a proper manner (full access to places of detention and the possibility to make private interviews with detainees and other persons).

In its reports the SPT also deals with additional information provided and with reactions of authorities to the preliminary observations delivered to them at the end of the visit.

I believe that as far as the situation concerning NPMs in both countries visited by the SPT is concerned, we will be provided with updated information.

I am sorry that I cannot be more concrete. I think that we should do our best so that very soon we will be able to say that it is normal practice to publish SPT reports without delay, soon after their delivery to States Parties.

Key criteria and pre-conditions for efficient NPMs

Ms Suzanne Soukoudé-Fiawonou, Magistrate,
Vice-President of the OPCAT Working Group, Togo



Introduction

Respect for human rights and their promotion are a major issue in international cooperation. They are an indicator in the assessment by the international community of the willingness of states to enrol in the community of democratic nations that make the protection of human dignity one of their priorities.

Human rights have become, along with security and the economy, the three pillars of the UN architecture for peace and justice. The prevention and the fight against torture and other cruel, inhuman or degrading treatments are among the fundamental signs of respect for human rights.

Thus, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of 10 December 1984 (effective as of 26 June 1987 under Articles 2.1 and 16) rightly obliges each State Party to take effective measures to prevent torture and other cruel, inhuman or degrading treatment. The concrete expression of these measures being: incrimination, prosecution of acts of torture and prohibition of using information obtained under torture.

The Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment

(OPCAT) of 18 December 2002, entered into force on 22 June 2006.

This text provides for a system of regular visits to places of detention in States Parties by independent international and national experts (Article 1 of the OPCAT). This system is based on a United Nations Subcommittee on Prevention of Torture (SPT) running parallel to a National Preventive Mechanism (NPM) in each country party to the Protocol (Article 2 of the Protocol). The establishment of an NPM is left to the discretion of each State Party (Article 3 of the OPCAT).

What are the essential criteria and requirements -in other words, the key requirements- for an effective NPM?

These requirements are many and they are the result of the OPCAT.

In the framework of this presentation, we will discuss some criteria and conditions and classify them into two categories. We will examine the requirements related to the powers and to the structure of an NPM and the requirements related to its working methods and budget. Of course, all these requirements must be provided by the text creating the NPM.

I-The requirements related to the power and the structure of the NPM

The effectiveness of the NPM depends on its mandate (the powers and guarantees that are granted to it), but also on its composition.

1. The effectiveness of the NPM depends on the mandate

The NPM must have:

- **A mandate to carry out preventive, systematic and regular visits**
- *Preventive visits.* The visits to be carried out under the OPCAT have a preventive character; their aim is to prevent. They must be preventive to preclude torture and other ill-treatment before they are committed: *"prevention is better than cure"*, as the saying goes. These visits differ in their nature, purpose and methodology from other types of visits that also exist and sometimes occur, for example *humanitarian visits or reactive visits aimed at ending a human rights violation.*
- *Regular visits.* These are not episodic, isolated or periodic visits. The concept of regular visits implies that the monitoring mechanism reiterates its visits to a given place of detention after a while and these visits must be unannounced and unpredictable. This is an essential element if the system of monitoring of places of detention is to be effective in avoiding abuse in these places.
- *Systematic visits.* Article 1 of the OPCAT states unambiguously that the visits conducted by national and international mechanisms are supposed to constitute a system. This refers to the idea that these mechanisms operate in a smooth, organised and coordinated fashion. We have to do here with a coordinated set of visits designed to achieve a result.

The result consists of avoiding the perpetration of acts of torture and ill-treatment.

For example, there must be collaboration, communication and coordination between the national and international mechanisms, and also between the different National Preventive Mechanisms of the country.

- **Access to all places of detention and to all relevant information**

The NPM must be able to visit all places of detention, enter into contact with the detainees, to listen to them, to speak with the people in charge of the places of detention and any appropriate information source, so as to strengthen the protection of detainees against torture and other cruel, inhuman or degrading treatment.

What do we mean by places of detention?

The term "place of detention" designates under Article 4 of the OPCAT: *"any place 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"*.

The places to visit and monitor go beyond the scope of prisons, police and gendarmerie units. They include any place where an individual can be detained and which he is not allowed leave of his own free will.

This broad definition makes it possible to grant protection to any person deprived of liberty by order of a judicial, administrative, military or other public authority, wherever it is.

For example, mental health centres, private or public centres for the placement of children, premises where disciplinary sanctions are executed by soldiers, policemen and gendarmes, police stations at the borders, transit areas of international ports and airports, etc.

But we believe that places where individuals are sequestered by order of private persons are not part of the places of to be visited. This is the case of criminals who kidnap their victims.

2. The effectiveness of the NPM depends on its status and its composition

We are talking here about the requirements and guarantees regarding independence, competence and composition under the Protocol. The NPM must be independent, competent and enjoy the privileges and immunities necessary to properly fulfil its mission.

It is imperative that the NPM meets a number of criteria.

- **Independence (art.18.1) from any authority (public, judicial, etc.)**

This independence must be institutional, functional and financial. This implies that the procedure for designation or appointment of members ensures that independence.

In several African countries, there may already exist an independent mechanism. In Togo, for example, there is an independent mechanism similar to *the National Human Rights Commission (CNDH)*, but the latter has a very broad mission. The NPM should have specific responsibilities regarding the treatment of detainees.

- **Multidisciplinary nature and taking gender into account**

The NPM should be composed of people of both sexes and of various professions (lawyers, doctors, psychologists, representatives of associations and NGOs working in prisons, social workers, etc.). This composition must not ignore the minority groups (Article 18.2 of the OPCAT).

The members must have the professional skills and experience required, and enjoy the privileges and immunities necessary to work effectively.

II-The requirements related to the method of working and to the budget of the NPM

1. The effectiveness of the NPM depends on its work methodology

- **The frequency of *ad hoc* visits is important**

The fact that these visits are not exceptional events raises the question of the frequency with which they must be made in order to be effective. The more frequent the visits made by the NPMs, the more efficient and fruitful they will be.

The NPM will need to:

- Conduct private interviews with detainees and any person able to provide relevant information;
- Develop and publish reports for the competent authorities;
- Make recommendations, proposals and comments to improve the treatment of detainees and prevent torture and other cruel, inhuman or degrading treatment.

2. The effectiveness of the NPM depends on its budget

The NPM needs a large budget and sufficient resources for the implementation of a comprehensive program of preventive, systematic and regular visits.

The functioning of a National Preventive Mechanism therefore requires:

- *human resources* (multi-disciplinary staff) in sufficient numbers with facilities in which they feel comfortable enough to work properly;
- *appropriate financial and material resources*;
- *logistics* (offices for the NPM, vehicles).

Conclusion

The National Preventive Mechanism must be credible in the eyes of detainees, authorities, civil society or the general public.

Even if in the text that establishes and creates the NPM, the latter has full authority and the necessary mandate, and even if it has all the financial, material, human and logistic resources necessary to carry out visits, it will not fulfil all the requirements under the OPCAT if it lacks credibility.

This essential quality will result from the procedure of establishment of the mechanism, but also from the women and men who run it.

The members of the NPM must inspire confidence. They must embody the moral values of honesty, openness and judgment necessary to enable the mechanism to be above any suspicion.

Finally, stimulating awareness and involving all the relevant actors in the process of establishment and enforcement of this mechanism is necessary. This applies to governments, civil society, public and private human rights institutions and the representatives of the various detention centres concerned, to name only a few.

Such are the essential criteria and requirements for an effective NPM.

2.1.3. Participants' Discussions

The various presentations were followed by discussions on:

- **The role of civil society during visits by mechanisms in a given country.** Emphasis was placed on reliable and credible information, which can only be provided to the SPT or the NPM by civil society. This collection of information is important because it allows the mechanisms to have a realistic vision of the situation of the places of detention in a given country. Civil society must therefore be proactive in collecting and transmitting data to the visiting mechanisms.

The role of civil society is also critical in updating information on places of detention.

- **The legal barriers** that may be invoked to limit access to the prisons, such as the confidentiality of investigations and the internal rules of prisons, which prohibit access and the taking of photos. All these barriers must be removed, as they should not impede the implementation of the OPCAT.
- **The issue of financial autonomy and of the independence of the NPM** are key elements of its credibility. Indeed, the budgetary guarantee is vital to the effectiveness of the NPM. If the ratification is an essential step, the provision of adequate financial resources is important to allow the proper functioning of the NPM and hence, a successful implementation of the OPCAT. Therefore, ratification of the OPCAT by the State imposes on its government the obligation of providing the NPM with sufficient resources to fulfill its mandate. It is **the State Party which is responsible for the NPM.**

Moreover, **the allocation of the budget of the NPM should be the sole responsibility of Parliament**, with which the NPM must maintain good relations. Therefore, it is essential that an ongoing dialogue is established, first between the NPM and Parliament, and secondly between the NPM and the government.

Finally, **the budget of the NPM cannot be checked by the executive.** It can only be submitted to review by the Court of Auditors or Parliament.

- **The cooperation of the NPM with other actors.** It is essential that the NPM works in coordination with the other national stakeholders working in the field of deprivation of liberty and in the field of human rights in general.

Ultimately, the NPMs should persevere in carrying out their mandate because the doors of the places of detention will only open in a progressive manner. This perseverance is essential and should be followed up with guidance and education of the detaining authorities, which will eventually gradually adapt and accept cooperation with the NPMs. Therefore, it is essential to overcome the frustration and discouragement on the path to cooperation.

The credibility of the NPMs in the eyes of the African populations depends on their sense of responsibility, which will have to materialise through discipline, rigor and perseverance in carrying out their mandate of prevention.

2.2. OPCAT Implementation: general considerations

The issue of the implementation of the OPCAT was an opportunity to share good practices and experiences in Africa and worldwide. This topic was addressed from several angles.

First, the emphasis was placed on the *need for dialogue and consultations on the OPCAT and the designation of NPMs*. Indeed, the implementation of the OPCAT is primarily dependent on its wide ratification, which can only occur after an inclusive dialogue has taken place between national stakeholders, as was the case in South Africa and Senegal. The same goes for the ongoing process in Benin and Togo.

Secondly, the effectiveness of the OPCAT in a State Party must lead to the designation or establishment of an NPM, which implies a broad dialogue involving all sections of society (state authorities, the opposition, national institutions and civil society). This open dialogue is essential to the effectiveness of the NPM. It also implies a mutual respect between the NPM and the competent authorities. It should result in the opening of places of detention to the NPM and in appropriate responses to the recommendations of this mechanism.

Thirdly, a dialogue must also be established between the NPM and the SPT, which is expected to provide guidance to the States on the establishment of the NPM. It is the responsibility of the SPT to explain the working methodology of the NPM and the relevance of constructive dialogue with all the stakeholders. The SPT must be able to help the members of the NPM regarding the expertise and capacities needed to carry out its mandate. The dialogue required by the OPCAT must emerge from discussions between the various relevant actors.

Finally, the *Consultations on the OPCAT and the best practices* from around the world provided an opportunity to share experiences and good practices on the African continent and elsewhere. Starting with the experiences of Senegal, Togo and South Africa, this discussion highlighted the need for a synergy between all the relevant actors (state authorities, parliamentarians, international and national NGOs, ACHPR) in the process of ratification and implementation of the OPCAT.

The discussions that followed the presentations focused on the authority responsible for determining the budget of the NPM, the complementarity between the prevention of torture and the other actions to protect human rights, and the role of parliamentarians and of the mechanisms of ACHPR in the process of ratification and implementation of the OPCAT.

2.2.1. The need for a broad dialogue on OPCAT ratification and implementation

The need for a broad dialogue and consultations on OPCAT and NPM designation

Mr Zdeněk Hájek, SPT member



Introduction

It is obvious that there is a huge need to further raise awareness of OPCAT throughout the African region.

This is necessary in many African countries that still did not show relevant interest to join the OPCAT family but also in those that have ratified.

The approach of governments and politicians towards acceding to OPCAT should be seen as a decisive sign of good will, respect for human rights and recognition of the absolute nature of the prohibition of torture and other forms of ill treatment in their countries.

OPCAT stipulates basic requirements that should be followed when establishing properly functioning NPMs - their independence, position, composition, mandate etc. and their legal basis.

A State Party should maintain, designate or establish an NPM at the latest one year after ratification of OPCAT (for the first parties of the Protocol it was one year after

it entered into force). The State Party can make a declaration – and if, must do so upon ratification – so as to postpone the term for a period of maximum 3 years. After representations made by the State Party and after consultation with the SPT, the UN Committee Against Torture (CAT) can extend the postponement for an additional 2 years.

I strongly believe that the possibility of postponement will not be used by African State Parties, as quite a lot of time has already been lost.

I have no doubts, that we all recognise the importance of the OPCAT mechanism and of the functioning of NPMs for the strengthening of the protection of persons deprived of their liberty against torture and ill treatment.

That is also the main reason why we are here, to do our best to push ahead and

“The approach of governments ... towards acceding to OPCAT should be seen as a decisive sign of good will, respect for human rights and recognition of the absolute nature of the prohibition of torture ... in their countries.”

expedite the procedures. It is highly desirable, not only for current State Parties to OPCAT to grant conditions for proper functioning of

NPMs or to designate NPMs as soon as possible within due time, but also for those states that are about to join the OPCAT not to waste time and to start and continue the process.

Inclusive, participative and transparent dialogue

Already in its first annual report the SPT issued preliminary guidelines for the ongoing development of NPMs. It expressly indicated for example, that they should be established by a public, inclusive and transparent process including civil society and other actors involved in the prevention of torture.

It also recommended that where an existing body was considered for designation as NPM, the matter should be open for debates involving civil society.

In the guidelines the SPT also stipulated in more detail what the requirements for the establishment of properly functioning NPMs are.

It is very important for the effectiveness of its work that the NPM has respect and natural authority, is taken seriously by the authorities and is composed of professionals that are independent and seen as independent and credible and enjoy support of civil society.

Of course it is the primary responsibility and obligation of a State Party – the government of a state – to establish an NPM. But the government should do so after a transparent public discussion in which the importance of the mechanism, its role and mandate will clearly be explained.

During the process, representatives of authorities from all levels, officials, politicians representing government as well as opposition parties should be

included. National Human Rights Institutions, Human rights defenders, Ombudspersons and offices should also be involved, as well as NGOs and representatives of civil society, especially those that are engaged and have experience with issues related to the deprivation of liberty and detainees (such organisations that already have the right and possibility to carry out visits of places of detention).

“... it is the primary responsibility and obligation of a State Party ... to establish an NPM, but the government should do so after a transparent public discussion...”

And as protection of persons deprived of their liberty means to protect all types of detention and all persons placed in different kinds of settings, facilities and institutions, also specialists and experts should also be invited to the discussions, those who can understand specific needs of different types of detainees, those who work with juveniles, women, psychiatric patients, immigrants, asylum seekers, aboriginals, disabled people, etc.

All those independent persons should not only be involved in the process of choosing the most suitable existing body or creating a new body that should play the role of NPM, such persons should also take up the honour and obligation of being members of NPMs.

Of course the process should be properly coordinated and should also include specialists that may present a qualified view about the design and structure of future NPMs and possibilities of their functioning throughout the whole country and in all places of detention, taking into account the size and complexity of the country and its geographical and administrative arrangements.

Role of the SPT in the dialogue

Although the final decision whether to designate an existing institution or to establish a brand new body and whether this role should be played by one or more bodies lies with the State Party, the SPT views should also be taken into account. The SPT is expected and mandated under OPCAT to advise and assist State Parties, when necessary, in the establishment of NPMs and will certainly not limit itself in issuing guidelines. The SPT is ready to be present and involved in the discussions.

If the circumstances and specificities of a country lead to the designation of multiple bodies on the same or different levels (e.g. in federal states on central and regional levels) or different bodies are designated to cover different types of places of detention, the SPT should and will ask how the communication among these bodies will be organised and how they will be coordinated, how it will be guaranteed that really all places of detention are properly covered by the various bodies.

The SPT will also ask questions about the consistence of strategies and methodologies of the bodies, and consistency in their recommendations and their dialogue with authorities. Moreover it will pay attention to whether and how contact of the SPT with the NPMs is granted. As the SPT should maintain direct and if necessary confidential contact with them, the State Parties must encourage and facilitate those contacts. The SPT must be granted a realistic possibility to offer the NPMs training and technical assistance, to help the NPMs to strengthen their capacity and mandate and advice and assist them in the evaluation of needs and means necessary to strengthen the protection of persons

deprived of liberty against torture and other forms of ill treatment.

It is obvious that in the OPCAT model NPMs are expected to play a decisive role in the strengthening of the protection of persons deprived of their liberty. They will only be able to fulfil this task if they are established and enabled to function in compliance with OPCAT requirements.

2.2.2. Consultations on OPCAT: best practice

A fruitful campaign for OPCAT ratification and implementation in Senegal,

Mr Seydi Gassama, Amnesty International Senegal



The campaign for the ratification and implementation of OPCAT in Senegal started in 2004, since in this year we received at our office Mr. Jean-Baptiste Niyizurugero accompanied by Chairman Malick Sow. Amnesty International Senegal began the coordination of the work on the OPCAT only in 2005, following a working meeting I had had with Jean-Baptiste Niyizurugero and Edouard Delaplace during a session of the Commission on Human Rights in Geneva.

The process has since then been characterised by an ongoing collaboration between the APT, Amnesty International and its partners in Senegalese civil society - a collaboration in which the APT has provided its expertise and advice, as well as, it must also be said, important financial support that has allowed us to hold seminars and hire a consultant to do a review of existing texts and mechanisms and to propose a mechanism adapted to the Senegalese context.

Our work started by lobbying the Ministry of Foreign Affairs for a prompt ratification of the OPCAT. It was incomprehensible that Senegal, after having been the first country to sign the OPCAT, was so slow in ratification. The workload and financial constraints were mentioned by our contacts at the Ministry of Foreign Affairs, but it is clear that the implications of

ratification at the institutional level were also being taken into account.

In January 2006, we organised a workshop on the OPCAT. The ministries concerned by the ratification and implementation of the OPCAT (Foreign Affairs, Interior, Justice), the National Assembly, including representatives of its three groups at the time plus the independent deputies, and the national human rights organisations participated in the seminar, which made it possible to better know the OPCAT and the opportunities it presented to protect the rights of persons deprived of their liberty.

Following the seminar, the Senegalese coalition for the ratification and implementation of the OPCAT was set up. It comprised officials from the technically concerned ministries, parliamentarians and one representative of each national human rights organisation. All the initiatives that followed thereafter were conducted by this coalition.

Subsequently, we were received by the Minister of Justice and the presidents of parliamentary groups of the National Assembly. The Minister of Justice at the time promised to contact his Foreign Affairs colleague to encourage him to expedite the ratification process and instructed the Directorate for Criminal Matters and Pardons (DACG) to work closely with the civil society towards the adoption of a consensual mechanism. We received the same support from the presidents of the parliamentary groups. Moreover, the President of the majority

parliamentary group immediately called the Minister of Foreign Affairs to raise his awareness and urge him to commit to a deadline for the ratification.

Two weeks after the seminar and these various meetings, the Council of Ministers adopted the draft law authorising the President of the Republic to ratify the OPCAT. The National Assembly passed the law in June 2006 and the instrument of ratification was deposited with the Secretary General of the United Nations on 18 October 2006.

For us, the battle was won. But one year after the ratification, Senegal had failed to define, let alone to create an NPM, as is stipulated in Article 17 of the OPCAT. With the agreement of the Minister of Justice, we hired a consultant whose study recommended a mechanism close to the French mechanism. This mechanism was subjected to the study of the ministries concerned and civil society, who adopted it during a seminar in December 2007. The NPM proposition was officially presented to the Keeper of the Seals in April 2008.

With the support of the APT, the Coalition developed and submitted to the President of the Republic the preliminary draft law creating the Inspector of places of deprivation of liberty. With the exception of the appellation - the Government preferred "Observer" to "Inspector" - the text of the civil society was accepted and submitted to Parliament, which voted for it in March 2009. The same spirit of cooperation prevailed with regard to the decree implementing the Law on the Observer and the financial decree, which were both proposals from the civil society. It seems that the decrees were merged by the Department of Justice, but the basic provisions they contained were maintained.

Our priority now is to get the Government to quickly adopt and publish the decree and appoint the Observer. Ideally, this should be done before the end of June to allow the Observer to assess his needs and develop a budget for an effective start of his activities in 2011.

As you will see in the Law on the Observer, the collaboration with civil society as well as with the regional and international prevention mechanisms is strongly encouraged. This collaboration is multifaceted and does not concern merely funding requests.

Let me conclude by sincerely thanking the APT for the support they have given to our Coalition throughout this process. I would like to thank the parliamentarians, the deputies and the senators for their support. I would also like to thank the Government of Senegal, beginning with the President of the Republic, for the total availability which he demonstrated towards civil society in this process.

Creation of an OPCAT working group in Togo and prospects for OPCAT ratification

Mr Denis Minekpor Kokou, Ministry for Human Rights



Subsequent to the national seminar on the ratification and prospects for an efficient implementation of the Optional Protocol to the Convention Against Torture

(OPCAT) organised jointly by the Togo Office of the UN High Commissioner for Human Rights (UNHCR) and the Association for the Prevention of Torture (APT) on 16-17 June 2009, a committee was created to follow up on the recommendations of the aforesaid seminar.

The missions assigned to the Follow-up Committee

The Follow-up Committee:

1. Lobbies in favour of a prompt ratification of the Protocol;
2. Supports the Ministry of Human Rights, Consolidation of Democracy and Civic Education in the process of analysis and reflection accompanying the establishment of a National Preventive Mechanism;
3. Supports the Ministry of Human Rights, Consolidation of Democracy and Civic Education in the elaboration of a draft law establishing the National Preventive Mechanism, once the Protocol has been ratified;

4. Pleads with any authority or competent body for the adoption and promulgation of a law creating the National Preventive Mechanism and for the effective implementation of the latter;
5. Contributes to a popular understanding of the law creating the mechanism as soon as it is promulgated.

Actions undertaken by the Follow-up Committee

Immediately after it was created, the Follow-up Committee adopted its internal rules and procedures and set up a plan of action.

In conformity with its plan of action, the committee intervened with the Prime Minister and head of government, the Minister of Human Rights, Consolidation of Democracy and Civic Education, the President of the National Assembly, and the President of the National Human Rights Commission (CNDH) in order to attract the attention of these different authorities to the advantages for our country deriving from a ratification of the OPCAT.

The Prime Minister assured the Follow-up Committee that the draft law authorising ratification of the OPCAT will be placed (by the government) on the list of texts to be submitted with priority to the National Assembly during its second ordinary session in 2009.

The Follow-up Committee also organised, on 18 November 2009, a round table on the theme *The stakes involved in ratification of the OPCAT*. This round table had the following objectives:

- Mobilise the key actors in order to speed up the process of ratification of the OPCAT;
- Stimulate participants' awareness of the OPCAT's contents;
- Offer a framework for keeping in view and dealing with the stakes involved in ratification of the OPCAT;
- Establish a pool of personalities who will become involved in the process of ratification.

This round table brought together roughly thirty key persons directly involved in the process of adopting legislative texts or the ratification of treaties in parliament, representatives of the Ministries of Human Rights, Consolidation of Democracy and Civic Education, of Justice, of Defence of Security and of Civil Protection, and representatives of NGOs.

Prospects

Desirous of establishing an NPM against torture founded on transparency and inclusivity, the committee proposes organising two workshops:

- The first workshop will consider the question "what kind of National Preventive Mechanism against torture does Togo need?" This workshop will allow all actors involved to clearly express themselves on their choice for a National Preventive Mechanism against torture.
- The second workshop will discuss the "preliminary draft law on the creation, organisation, and

functions of the NPM against torture".

The mission of the Follow-up Committee will end after the NPM is established.

Section 5 Committee of the South-African Commission for human rights and the path towards OPCAT ratification and implementation

Mr Danny Titus, Commissioner of the South-African Commission for human rights



Thank you for the opportunity to speak. I was asked to speak about the process in South Africa and in the Human Rights Commission, namely the Section 5 Committee and

was also asked to look forward at the way to ratification and implementation. It is sometimes quite useful to come out to organisations and to conferences like this and to realise how important it is to step outside of your national border and to hold hands with nations who are in this particular process of OPCAT as well.

I was asked to focus my presentation on the process and starting of the dialogue, look at the actions, look at the challenges, look at the interactions with other actors, the results and impacts, and then something about the way forward.

The SA Human Rights Commission is a Chapter 9 institution within our Constitution. The Constitution is where our Bill of Rights resides. It has all the authority that a human rights institution needs. It is an independent organisation in terms of the Constitution and is accountable only to Parliament.

(1) In terms of section 184(1) The South-African Human Commission must:

- (a) promote respect for human rights and a culture of human rights;
- (b) promote the protection, development and attainment of human rights; and

(c) monitor and assess the observance of human rights in the Republic.

(2) The South-African Human Rights Commission has the powers. As regulated by national legislation, necessary to perform its functions, including the power:

- (a) to investigate and to report on the observance of human rights;
- (b) to take steps to secure appropriate redress where human rights have been violated;
- (c) to carry out research; and
- (d) to educate.

(3) Each year the South African Human Rights Commission must require relevant organs of state to provide the Commission with information on measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and environment.

(4) The South African Human Rights Commission has the additional powers and functions prescribed by national legislation.

The Commission has been in existence for 14 years and it has all the Constitutional support to move forward OPCAT, to ratify and to implement it. South Africa has ratified the Convention on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment. We are mindful of the fact that we cannot in terms of the Law of Treaties go against the letter and spirit of the Convention, because the signing of it is not for nothing. It has certain responsibilities arising from it.

The Commission started in late 2009 with a complete new set of Commissioners. The other Commissioners' terms came to an end and we are now completely brand new. We are appointed for seven years so we think there is a sound basis for continuity.

As you may know, there is a public holiday today in South Africa, called Freedom Day. Because 16 years ago in 1994 we had our first elections as a democratic State. But the country, as you and I know is a little bit different to what it was in 1994. We are still a very young democracy and are looking very much forward to inviting you to the World Cup in June. I don't know what we are going to do when we have to detain a couple of people but we will have to have access to them. We will have to have visits that must be enshrined in our processes.

Section 5 Committee process

The whole issue of the APT and the Human Rights Commission began in 2006, when the APT and the SAHRC hosted a roundtable discussion on the OPCAT. Participants presented to the SAHRC an inventory of existing monitoring mechanisms in SA. This inventory was published in 2008. It provided an overview and analysis of existing systems for the prevention and investigation of torture in SA. It also recommended the setting up, designation or maintaining of a NPM. The Workshop concluded with the setting up of the Section 5 Committee. This is where the SAHRC involves a wide range of stakeholders from civil society and government to consider national implementation of human rights matters and invites stakeholders to come and share their experiences. It is in this committee that we then started with those recommendations towards ratification.

The section 5 Committee is mandated to promote the domestication of UNCAT as well as OPCAT ratification and implementation. It must also look at the establishment of the South African NPM. My understanding is that the process has not been working well. Particularly from our Commission side and there has been a lapse in our continuity. This is the benefit of this conference that we could focus much more. We had a discussion yesterday with Audrey and with two other colleagues who are also here, Lukas Muntingh and Amanda Dissel, and we have identified a very clear process for the way forward. We plan a national workshop after the World Cup to bring the process back on track. That to me is also the value of this particular conference. We have had wonderful inputs from NGOs, from government and to see what extent we can take it to government, and to take it to the Minister and as high as we can.

Actions

- One of the major challenges for us in South Africa will therefore be to bring the process back on track.
- To develop a three year programme strategically as well as operationally.
- This workshop will include the involvement of the APT – we have discussed this yesterday also.
- There is the suggestion of a national research project or audit in terms of what we have with role players such as the Judicial Inspectorate (relating to Correctional Services) and others such as Police and Defence). We have a very sound procedure in the Office of the Inspecting Judge or Judicial Inspectorate of Correctional Services which has the powers to visit prisons and interview prisoners. Under this there they have a number of Independent Correctional Centre

Visitors (ICCVs). They have access, budget, and process. On the other hand the same process is intended with the police. There is the Independent Complaints Directorate (ICD). They are the overseer of police.

- Interaction of this process with government ministers as well as the relevant parliamentary portfolio committees. We have these institutions we have parliamentary portfolio committees focusing on particular issues. We have the justice one, and the correctional services one, and the policing one. We need to interact with them at that kind of level. Because there is a major issue around awareness, understanding the relevance of international instruments. There is a concern around sovereignty and interference by outside bodies. You need to work through these things constantly.
- Then we thought we would ask the APT to investigate bringing the Torture Museum to SA. By way of awareness, not only of the mechanisms of and torturous instruments of the past but the torturous instruments of the present. And who are the companies who are exporting them, and who are the companies that are manufacturing them. With this we think we can make a huge contribution.

Challenges

It was very interesting for us yesterday, the South African delegation to visit Goree Island. We have never been there, but we got the sense that this is where it started. If we want to understand Africa we must understand what our violations where,

and we must understand our history, and we must understand where we are coming from. And to that extent, and to understand torture and human rights violations, it was an important narrative of torture on the Continent.

Can we speak of such a massive continent as if it is just another region? What is the African picture? Is the title of this conference not too ambitious? Do we understand this? Do we know what we are talking about?

“It seems as if once you ratify all will be OK. That is not true... States can ratify and still violate.”

I saw this documentation on this conference and asked myself, *“Isn't the documentation on ratification too optimistic?”* It seems

that we are all herded in the direction of ratification. It seems as if once you ratify all will be OK. That is not true. We heard it this morning. States can ratify and still violate.

Should we also not include the experience of victims of torture? Let them tell us whether we are making a difference. Let them tell us whether there is still torture. I know, I understand ratification in the international framework and it is crucial, but I miss this kind of soberness, this kind of reality check. Since 1948, and even before that, there was an understanding that States are there to violate human rights, and not to respect them.

In South Africa we are back at the old human rights debates of whether human rights are standing in the way of law enforcement? You know the debate.

As Jose Ayala Lasso, former United Nations High Commissioner on Human Rights, says: *“The message is as clear today*

as it was in 1948. Without the maintenance of the rule of law, violations of rights occur; and where violations occur, rebellion is fomented. The conclusion is inescapable: violating human rights cannot contribute to the maintenance of public order and security, but can only exacerbate their deterioration.”

We know that, but do the police know that? Do the law enforcement officials know that? Because they slide back so easily. Do the Senegalese police know that? You heard them talking this morning. Isn't that window dressing? And those are the kinds of questions that need to be asked. These are the old myths that survive.

Why then, asks Lasso, do the old myths continue to survive in some law enforcement circles? We have all heard the argument that respect for human rights is somehow antithetical to effective law enforcement – the tired old notion that, in order to enforce the law, capture the criminal and secure his conviction, it is necessary to “bend the rules” a little. We have all seen the tendency to use overwhelming force in putting down demonstrations, or physical pressure to extract information from detainees, or excessive force to secure an arrest. To this way of thinking, law enforcement is a war against crime, and human rights are merely impediments thrown in the path of the police by lawyers and non-governmental human rights organisations. Such myths survive, even though history has shown us, again and again, that nothing could be further from the truth.

We must be aware of paying lip service: the tribute that vice pays to virtue. This is the post-ratification challenge. Violating human rights even though all the international human rights instruments in place. In South Africa we are experiencing

the power of the Party. The Party is strong. And the Party has tentacles that go throughout the country. I found this quote the other day:

“Our majority rule could easily turn into inhuman rule if we oppressed, persecuted or harassed those who do not look or think like the majority of us. Democracy is never mob-rule.”

Robert Mugabe, address to the Zimbabwean nation, April 1980.

Other challenges

Chair, I will note these briefly:

Interaction of CAT and OPCAT with other fundamental rights and freedoms. We cannot do this only in terms of torture. We must realise how they interact with other rights. We must realise how the prisons, when we have so many thousands of prisoners who have not been sentenced. What is the impact on their livelihoods – jobs taken away and no income? Socio-economic rights.

Our countries need to understand why we have *International obligations*. I think our government Ministers, particularly the young ones, don't know what it means how to govern. They don't know what it means how to use their power. We must assist them with that. We were taught at law schools “*pacta sunt servanda*” (your agreements must be kept). Your honour is at stake if you violate these kinds of rights.

National sovereignty and the international law of human rights. This is a challenge to us because the countries value their sovereignty and they do not always understand why they must now beleaguer parts of their sovereignty to international bodies. Perhaps they must listen to Amnesty International to a certain extent.

“Mobilisation of shame”. I think we are becoming too decent when it comes to human rights activism. We are becoming too political, too diplomatic. Is there place for quiet diplomacy? I understand the role of the International Red Cross on that, because you look at the outcomes more than the methods.

Someone in the Red Cross told us in South Africa some years ago, that you know, *“Power is fun”*. *“The small boys that never had this kind of power, they enjoy it”*. We have to attend to that.

Regarding *interaction with other actors*, we really have to take responsibility on our continent. You know we always get together when the UN calls us together, or the funder or an international actor, but we never do it on our own. You see it in Amnesty International, I see it here as well. We really need to start taking our own continent seriously and interact with the African Union, the African Commission, with Governments at the highest level and with the media.

“We really need to start taking our own continent seriously and interact with the African Union, the African Commission, with Governments at the highest level and with the media.”

It is important also to look at *results and impact of our work*, taking into account that *“what gets measured gets done”*. We should include monitoring and evaluation in the process. Research around impact and what makes a difference in terms of lowering incidents or changing the culture should be promoted.

Finally, in terms of ways forward, it is important to interact with other NHRIs, in particular with the African Network of NHRIs. We have a responsibility in bringing the process in South Africa back on track and interact.

2.2.3. Participants' Discussions

The discussions focused on:

- **The authority responsible to determine the budget of the NPM.** It was reiterated that it is up to the NPM to determine its budget to ensure its complete financial autonomy. Indeed, given the African realities, the allocation of this budget by a particular department would bear the risk of the inaction of the NPM. In addition, the budget will only be submitted to parliamentary scrutiny and to the Court of Auditors.
- **The interaction between the prevention of torture and the other actions to protect human rights,** which should lead, among other things, to the criminalisation of torture. In Africa, few countries have legislations in this area.¹ This interaction should also lead to the punishment of perpetrators and the consideration of the victims.
- **The role of parliamentarians and relevant actors in the ratification and implementation of the OPCAT.** Parliamentarians have a key role to play, not only in the ratification of the OPCAT, but especially for its implementation. By way of illustration, it would be useful to consider establishing a group of parliamentarians, who would engage in the process of ratification and implementation. Parliamentarians should interact with members of the civil society (NGOs, national institutions, faith-based organisations), as demonstrated by the Senegalese experience.
- **The mechanisms of the African Commission on Human and Peoples' Rights should also be involved in the process of ratification and implementation of the OPCAT.**

¹ For more information, please refer to the APT's database on the legislations to criminalise torture at www.apr.ch

2.3. OPCAT implementation: What options for NPM designation?

If the ratification of the OPCAT is an essential step in preventing torture and other ill-treatment, it is not an end in itself. Indeed, the implementation of this instrument can only become effective by establishing an efficient NPM. Therefore, the States have an obligation to designate one or more NPMs. The Conference was therefore an opportunity for participants to review *the options available to the States for the designation of NPMs*.

Generally two options are left to the discretion of the States Parties to the OPCAT.

On the one hand, the States may decide to *establish one or more new institutions as NPMs*. This option was chosen by some States, such as France, Senegal and Benin, where the process of establishing the NPM is still ongoing.

On the other hand, the States may choose to *designate existing national human rights institutions as NPMs*. Thus, some countries, such as Mauritius, Maldives and Mali, have designated their National Human Rights Commission as the NPM. Other States, like Ghana, are considering such a prospect.

However, the designation of an existing structure requires the *individualisation of the NPM* within this institution, which should be done through the establishment of a distinct unit or department with a budget separate from that of the pre-existing institution.

The key ideas that came out of the discussions on this topic are particularly relevant to the type of mechanism to establish, the responsibility of the NPM in fulfilling its mandate, the independence of the NPM and the use of the Robben Island Guidelines by the NPMs. The issues of the types of visits, security and the obstacles that can freeze the ratification process and the process of establishment of NPMs were also addressed.

2.3.1. Tendencies and options for NPMs in Africa and elsewhere

Ms Audrey Olivier, OPCAT Coordinator, APT



At the present time, 54 States are party to the Optional Protocol to the Convention against Torture (OPCAT). 32 of these States have designated their

National Preventive Mechanism (NPM), and 20 additional states have signed the Optional Protocol. On the African continent, the progress of ratification is as follows: 8 states are party to the Optional Protocol; 4 of them have designated their National Preventive Mechanism; 8 additional states have signed the Optional Protocol.

Four years after the Optional Protocol went into effect, it is possible to describe several general tendencies concerning the form and structure of the NPMs, on the basis of practical examples available to us. These tendencies can serve as examples for those African states exploring the different options possible according to their national context.

Before discussing the different options for NPMs, it is useful to examine the criteria set out by OPCAT. The Optional Protocol specifies certain principles to be respected, such as the independence and the composition of the NPM, but it is silent as to the form and structure to be adopted for the national mechanism of prevention. It is thus up to the national leaders active in prevention to determine the most appropriate structure for their country.

We consider here four major options for National Preventive Mechanisms.

- **A body specialised in the prevention of torture and other ill-treatment**

Certain states have decided to create a new body or a new institution to take on the mandate of the NPM. This option, like the others, presents advantages, but also challenges. In the first place, these new institutions have a clear and strict mandate for prevention, and are therefore in a position to give absolute priority to questions dealing with the prevention of torture. They can thus have a greater long-term impact than existing institutions that enjoy a broader mandate. In addition, governments may feel that adopting a new law to establish a new mechanism will be easier than amending the legislation for existing institutions. It is also probable that a law creating a new body will satisfy the criteria set by the Optional Protocol better than the judicial framework for an existing institution.

Nevertheless, the creation of a new body as NPM poses certain challenges. A new institution may encounter obstacles in establishing its legitimacy and credibility, or in being perceived as independent by persons deprived of their liberty, by the custodial authorities, and by the public in general. Access to the totality of custodial facilities can also be a problem for the new mechanism. Thus, efforts to promote awareness of the mission, powers and activities of the new mechanism are essential in order to avoid these obstacles. Finally, the new institution must have sufficient resources (human, financial, and logistic) available over the long term, in order to be efficient in the prevention of torture and other forms of ill-treatment.

This option has been chosen by a number of State Parties, among them Senegal, Nigeria, Honduras and Switzerland. This option is currently being studied by Benin. France has also chosen this solution, but I will dispense with practical examples in the French case since we can refer to the presentation by Mr Delarue, Inspector General of Custodial Facilities in France.

- **National Human Rights Institutions**

Certain states have decided to designate a national human rights institution (NHRI, this term refers to national commissions for the human rights as well as to mediators or ombudsmen) as NPM. Although OPCAT requires State Parties to take into consideration the UN principles concerning the status and function of national institutions for the protection and promotion of human rights (Paris Principles), this does not mean that the mission of the NPM will automatically be given to the national human rights institutions.

Designating an NHRI can offer certain advantages. Some institutions may already enjoy the public's confidence and have a certain reputation in the area of human rights. Some national institutions already have experience in monitoring places of detention. Certain States may therefore regard the designation of a national human rights institution as a convenient and relatively economic solution. Nevertheless, it should be noted that the concept of independence is the basis for the work of the NPM, and in this respect the situation of NHRIs may vary. Certain national human rights institutions

are not in conformity with all the criteria of the Optional Protocol.

Thus, designating an NHRI as NPM implies changes in terms of mandate and method, but also in composition and in human, financial, and logistic resources. In fact, most NHRIs have a broad mandate, whereas that of the NPM is very specialised and entirely preventive. Visits to places of detention carried out by

“... designating an NHRI as NPM implies changes in terms of mandate and method, but also in composition and in human, financial, and logistic resources.”

NHRIs are generally reactive in character (in response to individual complaints). The majority of staff in these national institutions is made up of lawyers, whereas OPCAT requires a certain diversity of expertise and professional

experience in order to properly carry out the task of the NPM.

In response to the challenges posed by their designation as NPM, certain NHRIs have set up specific units or departments entrusted with the mission of the NPM. The National Human Rights Commission of the Maldives, represented today by Mr Mohamed Zahid, has adopted this solution.

In Africa, Mali and Mauritius have designated their National Human Rights Commissions as NPM and are now considering activating this new preventive mandate, whereas Ghana is exploring this possibility.

- **National human rights institution plus civil society**

Certain State Parties have decided to associate civil society in fulfilling the mandate of NPM. They have done this by formally designating their NHRI as NPM,

in cooperation with civil society. This cooperation takes place primarily through the activities dealing with the monitoring of places of detention. This option is seen in certain countries as a means of compensating for the lack of expertise or resources within existing institutions. The formal implication of civil society can also give a certain legitimacy and credibility to the NPM, as well as contribute to covering a larger part of the national territory.

Nevertheless, the APT recommends that a public and transparent procedure be set up in order to select the organisations from civil society wishing to participate in the mission of the NPM.

It is also essential to adopt and put into effect procedures for cooperation (division of tasks and responsibilities, decision-taking, etc) between the NHRI and the organisations from civil society. Civil society organisations cooperating formally with the NHRI must also have the same guarantees and immunities as the members of the NHRI when carrying out functions for the NPM.

It should be emphasised that the formal implication of organisations from civil society in the work of the NPM can also present challenges for civil society itself. This is particularly the case when an organisation from civil society enjoys considerable experience in monitoring places of detention, but has turbulent relations with the authorities, whereas the Optional Protocol favours dialogue and cooperation with the government. One should also note that this option is not the only form of cooperation between civil society and the NPM.

This option has been chosen principally by European states, and no African state is currently considering this option. Moldavia, Slovenia, and also Denmark have chosen to formally associate civil society with the mission of the NPM. At the moment of ratification of the Optional Protocol, Slovenia made a declaration by virtue of Article 17 of the Optional Protocol and indicated that the mandate of the NPM would be assumed by the Ombudsman (Human Rights Ombudsperson's

“...the APT recommends that a public and transparent procedure be set up in order to select the organisations from civil society wishing to participate in the mission of the NPM.”

Office) in cooperation with civil society organisations. The Ombudsman then issued a public appeal for candidacies from interested

organisations. In the first year, two non-governmental organisations responded and were selected for one year. A cooperation agreement was signed with the Ombudsman, clarifying a certain number of elements, such as confidentiality, the exchange of information, and the conduct of joint visits to places of detention. In December 2008 another public appeal was made in order to widen the representation of NGOs cooperating with the Ombudsman, and three organisations were selected.

- **Multiple bodies**

Some states have chosen to designate several bodies as their NPM. This option is generally chosen by states that have large territories and a relatively complex governmental structure (decentralised or federal). States can thus designate several existing institutions, create one or more new institutions or designate both existing institutions and newly created institutions to assume the NPM mandate.

We can identify four categories of multiple NPMs: bodies selected according to the geography of the territory; bodies selected according to jurisdictional divisions (this is above all the case for federal states); bodies selected according to theme and special expertise (migrants, police, etc.); and, finally, a combination of the previous three options.

Few African states are considering this option, although South Africa is studying the possibility of eventually designating several agencies as NPM. A concrete example of a multiple NPM is that of New Zealand. This State Party has designated four existing institutions with special competencies in areas concerned with the deprivation of liberty, and which are coordinated by the National Human Rights Commission (called the central NPM). Thus the four existing institutions visit places of detention corresponding to their expertise, whereas the NHRC coordinates the activities of the NPM in its entirety (coordination meetings, annual report, etc.).

Designating several bodies as NPM can ensure better thematic and regional coverage of places of detention. However, it is important to emphasise the need for coordination among the different bodies, in order to avoid unnecessary duplication or uncovered zones. Effective coordination can ensure a certain unity of standards and methods adopted and the efficiency of the mechanism as a whole. At least one of the bodies should have the role of a coordinator and ensure contacts with the Subcommittee on Prevention. It is also essential that each institution is in conformity with the criteria of OPCAT.

2.3.2. The creation of new institutions

The creation of the General Inspector of Places of Deprivation of Liberty in France

Mr Jean Marie Delarue, Contrôleur général des lieux de privation de liberté, France



Mechanism (NPM).

I would like to express my pleasure at being able to share with those present at this African conference my experiences as the French National Preventive

with the following words: decrepitude, brutality, poverty, and indignity.

- Once France had signed, in 2005, the Optional Protocol, it felt itself bound, sooner or later, to create a NPM. It did so sooner rather than later, because the law establishing the function of General Inspector preceded ratification of the Protocol¹.

There is no "French model" for the institution under discussion. The best model is one which, in each of our states, effectively ensures (or will ensure) the mission of preventing torture.

What follows is the fruit of twenty months of practical experience (the French NPM, or General Inspector of Places of Deprivation of Liberty, effectively began work on 1 September 2008). This experience derives, to date, from roughly 240 visits in establishments of all kinds. The conclusions drawn are mine and mine alone: They are presented here from their problematic side, leaving each participant free to form his or her own judgement.

1. Problems in defining the institution

1.1. Elaboration of the law of 2007 and the ensuing debates

- Absence of hostility in France towards the idea of creating the institution, in view of the following:
 - Growing awareness over the last ten years of the situation in French prisons, which I would sum up

Absence of hostility was also demonstrated by the fact that the law passed without an adverse vote and the opposition abstained.

- The opposition abstained with the argument that it had not received an answer to its questions and criticisms. These were as follows:
 - A minor criticism: the lack of authority for the General Inspector to take action when the French military, on missions abroad, deprives individuals of their liberty. This is, in my opinion, a marginal phenomenon.
 - A "theoretical" criticism: Lack of a power of injunction for the General Inspector (*vis à vis* the administration). However, such

¹ It is hardly necessary to recall that, in effect, there is no legal obstacle preventing a state from creating the "NPM" prior to ratification, as long as – which is the case here – the law conforms to the contents of the Protocol (were this not the case, the law would have to be changed immediately after ratification in order to comply with the obligations arising from the Protocol).

power is less useful to the extent that it can be discredited (along with the general inspectorate) if the administration fails to comply and seeks to evade its responsibility, as it is quite capable of doing; such power can also prove less efficient than discussion and persuasion in giving force to the General Inspector's demands.

- o Criticism of resources available.

The number of personnel assigned to the institution was said to be insufficient relative to the number of sites to be visited. I do not share this view: On one hand, we must take into account the experience acquired in various forms from one site to the other; on the other hand, the limited number of personnel (the equivalent of 25 full-time employees) can ensure unity of thought and action among all the inspectors).

It should be noted that the French law expressly includes, in identical or very similar language, numerous provisions contained in the Protocol (for example, the obligation for the General Inspector to cooperate internationally).

1.2. Definition of the institution

With regard to the two underlying origins mentioned above, the French law introduces a double extension:

- As intended by the Protocol, the General Inspector's role is not limited to prisons, but extends to all facilities where individuals are deprived of their liberty, whatever the reason

(fortunately, the law does not enumerate these facilities, which allows considerable flexibility in its application).

- The General Inspector is not limited to the prevention of torture (and of inhuman and degrading treatment): the law requires him to monitor the fundamental rights of all persons deprived of their liberty (including, for example, the right to freedom of expression; the right to respect of private and family life, etc.). In these areas, as intended by the Protocol, the law gives the General Inspector the essential role of prevention.

"As intended by the Protocol, the General Inspector's role is not limited to prisons, but extends to all facilities where individuals are deprived of their liberty, whatever the reason..."

The law confers on the General Inspector a status covering many of the points already discussed at this meeting and which it is unnecessary to mention here in detail: independence and the practical resources for getting the job done; the necessity of discretion; and freedom to publish conclusions and recommendations, etc. Whereas an initial draft law in 2006 attributed the new mission to the Mediator of the Republic (= French "ombudsman"), the subsequent law gave the mission to a special authority. It had in fact become clear that prevention should not be confused with mediation. In my view, this is a judicious choice that helps safeguard the independence of the General Inspector.

1.3. Means of action available to the General Inspector

It is important to differentiate, to concentrate on the essential points:

- Unrestricted visits; I will come back to this point later;
- The possibility for all persons to appeal to the General Inspector, a possibility now generating an abundant flow of mail (at current rates, roughly 2,500 letters annually) and which constitutes an important source of information;
- Recommendations and advice, to be made public at the initiative of the General Inspector;
- The option, on the basis of established facts, to inform the Prosecutor of the Republic with the aim of eventually initiating prosecution (an option already used), and to inform the responsible minister with a view to opening disciplinary proceedings against an agent.

2. Problems of method

The success or failure of the institution depends in particular on a lucid analysis of the difficulties it encounters in accomplishing its mission. The experience so far acquired opens up several avenues of reflection.

2.1. Above all, we must be wary of ourselves

The inspectors, members of the NPM, must eliminate three temptations:

- The most insidious of these is not to be sufficiently attentive to the effective application of fundamental rights (notably the right not to be subjected to inhuman and degrading treatment). Despite ourselves, we run the risk of accepting abstract affirmations frequently used by responsible authorities at detention sites, to the effect that the application of a regulation is "provided for" (and even

that its non-application is sanctioned), or allusion to standing instructions stating that "this patient - or this person in custody - has the possibility of, ...can, if he/she desires, ...obviously has the right of..." It is impossible to be satisfied with such an approach. Although this attitude is readily adopted by the authorities encountered, it cannot be our attitude. We are not questioning whether a right or theoretical possibility exists, but whether it is being exercised in practice: When? How often? Under what conditions?

- An example is the presence of showers installed for the use of persons in custody at new police stations. It is not a matter of welcoming the "progress" that such installations represent compared with older stations, but to know if the persons detained really use the showers when they request to do so, in particular after a night in detention. In fact, most of the time the response is negative; the showers are rarely used; in practice, there has been almost no change.

To trust abstract arguments is to trust appearances. The question of fundamental rights requires a radical separation between appearance and reality.

- One must also beware of routine. We are never indifferent to our first visit. But by the tenth or hundredth visit, there is a danger of losing from view the imperative nature of the effective application of rights. That imperative nature can be diluted by other considerations: lack of credits, customary usage – including of local facilities – by professional staff (police officials, guards, etc.), the feeling that "there is no other choice..." The application of principle must remain

intact. It is for this reason, notably, that the NPM itself must remain transparent for public opinion (while still fulfilling its obligation of discretion). It is for this reason also that the composition of visiting teams is constantly changed. And it is for the same reason that we have opposed any "regionalisation" of inspection. The General Inspector has only one national team.

- One must also be on guard with respect to the behaviour of the authorities in charge of persons in detention. These authorities can, outside the framework of official visits to their establishments, take reprisals against individuals who have appealed to the General Inspector, have spoken to him, or have otherwise informed him of the realities of detention. In France we have had precise information indicating that, following visits, those interviewed (whether staff members or persons detained) by inspectors, have been interrogated or questioned. Certain prisoners have been deprived of work for the sole reason that they made themselves known to the inspectors. It is thus imperative to closely monitor the protection of persons who put aside fear, threats and the reactions of others in order to talk openly.

2.2. It is imperative to maintain the absolute independence essential to our work

In France we say that the devil lies in the detail. The details of management and communication must not diminish the inspectorate's full liberty of expression and diagnosis: This is a matter of permanent preoccupation for us.

Three examples illustrate this preoccupation:

- The recruitment of persons collaborating with the national system of prevention of torture is the unique responsibility of the General Inspector. This is required by the Protocol and must be permanently respected. The criterion of competence and independence of personnel must have priority over all other considerations. This is self-evident.
- The budget. I have already touched on this point during the preliminary debates. It is perfectly normal that taxpayers' money allocated to the National Preventive Mechanism be accounted for in the state budget². By contrast, the decisions on how that money is spent, whether for operations or for investment, are taken exclusively by the General Inspector. The verification of those expenses is carried through only afterwards by a specialised jurisdiction, the *Cour des comptes* (Audit Office), which itself is independent of the government. As for the amount of funds available, it should be determined annually in a clear, identifiable and distinct way, in a transparent parliamentary procedure.
- Participation in the government's work must be envisaged with extreme reserve, and *à priori* with a negative attitude. The general inspectorate cannot fix in advance its opinion with regard to any "action" whatsoever. For example, we were invited at one point to visit a centre of retention for foreigners which at the time was still under construction, i.e. totally empty

² In France, it is contained in a "chapter" of the budget devoted to funds for the Prime Minister's office, along with credits for other independent agencies. This "chapter" is administered on a purely accounting basis by the secretary general of the government (who is a civil servant and not a "politician").

of occupants. We subsequently realised that the comments we voiced during the visit could be used by the administration (in good faith) as expressions of approval of the choices it had made. It is not our job to give congratulations in advance, but to describe the conditions of the places visited as soberly and objectively as possible. This is why any participation in official activities must be envisaged with considerable reserve. In addition, we must specifically ensure that we keep the confidence of persons deprived of their liberty.

These persons can trust us only if they are able to easily distinguish between our actions and the government's actions.

2.3. Problems of method are particularly important during visits

The establishments visited are not easily accessible, in any sense of the term. In other words, their reality is not easily exposed. There are no notices posted on the doors warning the citizen that "this is a site for torture and inhuman and degrading treatment." It is exactly the opposite. This is why one must insist, when visiting these establishments, on practical precautions that will help in uncovering the truth.

- Visits must be extended. One or two days for a police station or a "*brigade de gendarmerie*" (gendarmerie brigade); several days (three, four, or five...) for a prison or hospital; the duration depends on the capacity of the

"No responsible official of the establishment visited should accompany the inspectors on their visit."

establishment and on the number of persons effectively deprived of their freedom. Visits should take place during the day and at night (people tend to be more talkative at night), during the work-week as well as on days off and on holidays.

- Visits should always be carried out by several persons, and the size of the inspecting team should be adapted to the importance of the establishment visited. Thus, a recent visit to the waiting zone (for foreigners turned back at the border) at Roissy-Charles-de-Gaulle Airport simultaneously mobilised nine inspectors. The inspectors should be chosen from different professions and according to the nature of the establishment visited. For example, a visit to a psychiatric hospital should not take place without a medical doctor on the team.

- No responsible official of the establishment visited should accompany the inspectors on their visit. If the official insists on following the inspectors, the latter should in any case separate from each other during the visit, in order to examine the daily life at the establishment from different viewpoints: in this way the responsible official does not have the means to control the visit.

"Surprise visits are a necessity."

- Surprise visits are a necessity. They should be the rule in small establishments (those in which conditions can be modified in a short time); they can also be carried out in large establishments, especially where ill-treatment is suspected (in this case visits should begin immediately at the suspect sites in the establishment: disciplinary quarters, isolation cells,

etc). But in these larger locations it may prove useful to announce visits in advance (one week); this allows persons in detention (whom we notify by means of a circular placed in each cell) to prepare the interview they wish to have with the inspectors. If changes motivated by the announcement of the visit have in the meantime occurred, we will obviously be informed of this by the prisoners themselves³.

- Interviews should be conducted with people of all categories during the visit: persons deprived of their liberty, guards and other personnel entrusted with surveillance, but also third parties (doctors, concerned associations, lawyers, chaplains, family members, etc.). The list must be adapted to the situation. Third-party interviews may of course take place outside the establishment. The inspectors must not be content with speaking only to those who have asked for a meeting. Others, who have not requested a meeting, are frequently the most interesting subjects. We should also listen to dissident voices, those expressing minority opinions (notably among the establishment's staff), and newly hired or senior employees. These conversations should inspire confidence in individuals ready to provide information. This confidence must never be betrayed.
- Interviews in themselves are not sufficient. One should read the various documents objectively describing the condition of the establishment visited: flowcharts, accounting records, court documents, disciplinary inquiries, statistics on medical consultations, etc. For example, records listing the

expenses of prison occupants make it possible to retrace the frequency with which each prisoner uses a telephone⁴, and thus to determine the possibility for the prisoner of maintaining contact with the outside world. Of course, certain practices are not the subject of any document. It is therefore important to describe conditions as rigorously as possible. For example, in France the number of prisoners who do not use the exercise yard for fear of being attacked (by another prisoner) is indicative of the climate that reigns in the establishment.

An effort should be made in each establishment visited to create a relationship of confidence with one or several members of staff, so that following the visit these individuals can continue to inform the general inspectorate of the evolution in the establishment. Contacts of this type with representatives of labour unions can also be useful.

3. The problem of results

The value of the institution obviously resides in its ability to bring about change for the better; in other words to prevent, in the future, cases of torture or inhuman or degrading treatment, and, in the case of France, to better insure respect of each fundamental right of each person detained.

One should not assume that this task is easy or that it will be received outright with general acclaim⁵. It can encounter serious obstacles, all the more so as the nature of these places is such that each staff member, from the highest to the

³ For example, copies of the Declaration of Human Rights posted in prison corridors on the eve of arrival of the inspectors.

⁴ In France, the cost of a prisoner's communications with the exterior are borne by the prisoner.

⁵ To paraphrase Rosa Luxemburg: "the prevention of torture is not a gala dinner."

lowest, holds extensive power over the person deprived of liberty. In other words, even if the director of the establishment adopts the objectives of the NPM, this good will can be rendered totally ineffective by the opposing practices of a corridor guard or a functionary charged with surveying prisoners and *vice-versa*.

The task will be facilitated if the General Inspector adopts an attitude – which is not as simple as it might seem – of confidence toward the authorities and maintains with them, to the extent possible, a regular dialogue. Exaggerated criticism should be avoided (the French General Inspector abstains from making comments on government projects – that is not his job), as well as any collusion, any confusion of roles, as already stated.

3.1. Positive effects

Direct effects distinguished from indirect effects:

- I define **direct effects** as those obtained, in the short or long term, from the authorities to whom we have made known our observations or recommendations. This is primarily the case for the responsible officials of the establishments visited. Within the limits of their prerogatives and the credits at their disposal, they frequently and rapidly apply the steps towards improvement requested of them. Renovation of premises⁶, change of procedures, availability of

“The frequency of visits made in the last twenty months has increased the awareness of responsible officials that, sooner or later, the[ir] institution ... will be ... visit[ed]. They are thus motivated to modify practices...”

documents for persons deprived of their liberty... Such decisions are often obtained.

It is also, secondarily, the case of government ministers (justice, interior, health, immigration...) to whom recommendations are automatically sent. National directives have been issued in order to correct the practices we denounced, and other measures have been taken. For example, observations to the effect that prison registers were on occasion incomplete were followed by a decision by the inspectorate general of the national gendarmerie to initiate a broad study of this problem, preliminary to more ample measures. The question of arms for police officers present in the detention centres for foreigners, a question raised by the General Inspector, is in the process of being resolved (the police officers will no longer be armed). The privatisation of the "canteen"⁷ in certain prisons will

not be generalised, contrary to the initial plan: We alerted the Minister of Justice to the very considerable price increases that resulted from this operation.

- I define as **indirect effects** the changes due to modifications in behaviour that go beyond recommendations made and beyond the orders of responsible officials. Two examples are given here.
- The frequency of visits made in the last twenty months has increased the awareness of responsible officials that,

⁶ The former police colleagues of a member of the general inspectorate, himself previously a police commissioner, once said to him jokingly: "You're costing us a lot of money in cans of paint".

⁷ The possibility for prisoners to order and pay for current consumer goods from outside the prison.

sooner or later, the institution which they head will be the object of a visit. They are thus motivated to modify practices that appear contrary to what they know to be the principles of the General Inspector.

- Other professions, expected in greater or lesser degree to give their opinion on the conditions at detention sites, feel stimulated in their role. During a visit to one such site, the General Inspector expressed astonishment over the conditions in which conversations between prisoners and their lawyers took place and which resulted in a lack of confidentiality. It is probable that the lawyers themselves, who no longer paid any particular attention to this situation, will in the future be more vigilant, at this site and elsewhere.

In other words, the very existence of the General Inspector loosens tongues and renders the various interested parties more attentive to guarantees for the preservation of fundamental rights.

3.2. Effects still to be developed

It is clear that many questions could not be resolved in the course of twenty months. Patience, but also an indispensable stubbornness, are two key qualities needed in the office of the General Inspector.

Here are two examples:

- Very soon, for reasons unnecessary to mention here, the police authorities were asked to stop confiscating from persons taken into custody eye glasses and (in the case of women) bras⁸, a measure which created a humiliating and perfectly unnecessary situation. To this request, the Minister of the

Interior responded that, for reasons of security, he would continue to enforce orders to confiscate these items. This opposing opinion, among many other examples, illustrates the conflict to be resolved between the imperatives of dignity and of security, regardless of the reasons, right or wrong, invoked for security.

- During recent months the General Inspector has repeatedly warned the government against the construction of penitentiaries for 700 to 900 inmates, in which tensions, conflicts and violence are much more important than in establishments for 100 or 150 prisoners. The Minister of Justice has reduced the size of the largest projects, but has approved constructions for 700 persons. Here, budgetary constraints are in conflict with a policy more respectful of personal dignity.

Security, budget considerations, public opinion (naturally very sensitive to the effects of crime) -- these are the obstacles frequently invoked. It is obviously up to the General Inspector to take into consideration the various factors, while at the same time achieving progress. Whatever happens, he cannot back down on the recommendations he has presented: He will therefore continue to put forward these two recommendations, without dramatising, but also without renouncing, until the government is ready to cooperate.

Human dignity is immutable.

⁸ Motivated, of course, by the argument that these items could be used to cause harm to oneself or someone else.

Propositions for the establishment of a national observer for the prevention of torture in Benin

Ms Marie-Gisèle Zinkpè, Magistrate, Ministry of Justice, Legislation and Human Rights, and Coordinator of the OPCAT working group, Benin



Introduction

The Republic of Benin has been a Party to the Optional Protocol to the Convention against Torture (OPCAT) since 20 September 2006.

I would like to recall that this instrument establishes in its provisions, including Article 1, a system of regular visits to places of detention by an independent international body, "the Subcommittee on Prevention of Torture" (SPT) and "National Preventive Mechanisms" (NPMs) against torture.

In this capacity, Benin has a dual obligation:

- Host on its territory the visit of the Subcommittee on Prevention of Torture;
- Administer, designate or establish, in accordance with the provisions of Article 17 of the Protocol, and within one year, the National Preventive Mechanism against torture.

The process of establishing the NPM against torture in Benin

In the framework of the implementation of these international commitments, Benin has started, with the authorisation by the

Council of Ministers on 6 December 2006, the process of establishing the National Preventive Mechanism against torture, including in particular the organisation of a seminar on 17-18 July 2007, to determine the type of mechanism to establish, define the mandate and prerogatives of its members as well as its functional independence.

About thirty actors with proven expertise in the area covered in the Protocol took part in the meeting. They were mainly representatives of institutions of the Republic (Constitutional Court, Parliament, Courts and Tribunals), state structures, civil society organisations and persons from other sectors.

The discussions were fundamentally based on the type of mechanism to establish, in particular with regard to the following questions:

- Should we reinforce a state structure such as the Benin Human Rights Commission (CBDH) or designate another organisation of civil society?
- Should we establish one or more organisms?
- How to ensure the cohesion of the NPMs in case of multiple mechanisms?

The appraisal of systems used in visiting detention centres in Benin and the experience of international and regional mechanisms with places of detention guided the participants in their choice.

Indeed, the appraisal of the visiting systems led the seminar to conclude that there were no independent structures that met the criteria defined by the Protocol. The visits to places of detention were often reactive visits or visit with a humanitarian purpose. The irregularities observed at the level of the Benin Human Rights Commission did not make it possible to opt for the strengthening of this structure. It was thus decided to establish by law, on the basis of Article 98 of the Constitution of Benin, which lists the matters within the scope of the law, a single National Preventive Mechanism against torture.

The follow-up on the recommendations from the meeting helped develop a preliminary draft law for the creation, organization, attribution and functioning of the national mechanism called the “National Observatory for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment”.

In its mandate, composition, prerogatives and mode of designation, the body proposed by the team meets the criteria defined by the Protocol and presents the safeguards recommended for its establishment, including its functional independence.

Mandate and Composition of the Observatory

The mandate of the Observatory for the Prevention of Torture is described under Title III of the draft text.

According to the provisions of Article 13, the Observatory has the following responsibilities:

- Make regular visits, announced or unannounced, in all places of detention;

- Examine the situation of persons deprived of their liberty in these places, with the aim of reinforcing, where necessary, their protection against torture and other cruel, inhuman or degrading treatment.

As part of its competencies, the Observatory may:

- Provide advice and make recommendations to the competent authorities;
- Submit proposals and observations concerning the existing legislation or the draft legislation;
- Develop cooperation with national, regional and international structures.

Under the provisions of Article 4 of the draft text, the Observatory is composed of five (5) permanent members and employees, including at least two women, chosen from among persons of good moral character, known for their expertise in human rights or having professional experience of at least five (5) years in the field of administration of justice in particular, criminal law and prison or police administration or in various fields related to the treatment of persons deprived of their liberty. They must be nationals of Benin, at least thirty (30) years old and enjoy their civil and political rights.

Taking stock of the process of adoption of the draft law

In August 2008, during a special session, the National Commission on Legislation and Codification reviewed and validated the preliminary draft text.

In accordance with the procedure required for the adoption of laws in Benin, the Keeper of the Seals, Minister of Justice,

Legislation and Human Rights, Chairman of the National Commission on Legislation and Codification, forwarded the draft text to the Secretary General of the Government in anticipation of receiving an opinion of the Supreme Court.

The draft text was returned to the Department of Justice, because of a different interpretation of Article 98 of the Constitution, which lists the pertinent matters under the law.

To overcome these difficulties, it was suggested by the President of the Law Commission of the National Assembly, whose expertise was sought, that the reform of the Code of Criminal Procedure which is now in an advanced stage, take into account the concerns about visits to places of detention by bodies authorized by the international conventions to which Benin is a Party.

In October 2009, a seminar brought together at the National Assembly magistrates, prosecutors and lawyers to review the draft Code of Criminal Procedure proposed by the Law Commission. Thus the notion of visits to prisons and other places of deprivation of liberty by all moral or physical persons entitled under international conventions was introduced into the draft Code of Criminal Procedure.

The text states that a decree will set the functions, organization and functioning of the monitoring body.

Challenges and prospects related to the establishment of a new institution for the prevention of torture.

The plenary review of the Code of Criminal Procedure has been repeatedly

placed on the agenda of the National Assembly but has never been mentioned.

The prompt establishment of the National Observatory for the Prevention of Torture is therefore a major challenge. Benin does not yet possess its mechanism, four years after the ratification, although the OPCAT requires States Parties to establish it within one year after ratification.

It would therefore be appropriate to reinvigorate the Follow-up Committee so that it does more lobbying to speed up the voting procedure of the Code of Criminal Procedure and ultimately that it watches over and assures issuance of an implementation decree by the President of the Republic.

The national observer of places of deprivation of liberty in Senegal

Mr Oumar Diouf, Magistrate, Deputy-Director for Criminal Affairs and Pardons,
Ministry of Justice, Senegal



I. The Institution of the National Observer of Places of Deprivation of Liberty in Senegal

In compliance with its international obligations, Senegal has created an NPM called the

"National Observer of Places of Deprivation of Liberty in Senegal" (Observer). This is an independent administrative authority with the following missions:

- To visit at any time any place of detention situated on the territory of, or under the control of, Senegal;
- To offer advice and draw up recommendations for the public authorities;
- To propose to the government any modification of pertinent legislation and regulations.

The National Observer is also the privileged interlocutor of the SPT.

The parliamentary debates relative to the institution of the Observer raised a certain number of questions, in particular with regard to:

- The risk of multiplying the number of human rights institutions and thus the obstacles to their functioning;
- The choice between the terms "Observer" and "Inspector";

- The effects of the Observer's recommendations;
- The choice of a woman as Observer;
- The method of nominating the Observer and delegate-observers.

The Minister of Justice specified that Senegal's NPM will enjoy the operating and financial independence necessary to achieve its mission. In addition, the NPM's activity reports will be public and can be published by the media.

The choice of the term "Observer" is justified by the desire to avoid confusion of a semantic nature, and it is up to the President of the Republic to designate either a woman or a man to head the NPM.

According to Law No. 2009-13 of 13 March 2009 the Observer is named by decree on the basis of his competencies and for a non-renewable term of 5 years. The Observer cannot be prosecuted for opinions or acts accomplished in the exercise of his functions. The Observer's mandate is incompatible with any other professional activity or elective office.

Each year, the Observer prepares an activity report that is handed over to the President of the Republic and which is also made public. The Observer can cooperate with other competent international bodies having the same missions.

II. The challenges posed by the establishment of a new institution

The creation of the institution of Observer poses several challenges

For the penitentiary administration and the state services entrusted with execution of measures depriving individuals of their liberty, the first challenge is to improve conditions of detention and to sanction abuses committed in places of detention.

The second challenge has to do with the capacity of the penitentiary administration to enable the NPM to proceed with the collection of information from persons in detention who claim to be victims of abuse.

The third challenge is to complete the process of ratification and implementation and eradicate abuse with regard to persons deprived of their liberty.



2.3.3. Participants' Discussions

The discussions focused on a number of points:

- **The issue of unannounced visits**, including security during such visits. **It is up to the NPM to choose to make unannounced visits. These should be the rule for small facilities** (police, gendarmerie, etc.). **For large institutions, preference should be given to announced visits and the detainees should be notified one month in advance.** Indeed, the scheduled visits can help to meet people who have information that is useful to the NPM and that may not be presented during unannounced visits (the librarian of the prison, for example).

Security should not be an obstacle to visits, because even dangerous prisoners or those with mental disorders are receptive to the visits of the NPM. The question that arises is whether the NPM should comply with the safety rules regarding, for example, the movements of the prisoners within the prison. The principle is to comply with the rule without such compliance being interpreted as a sign of obedience to the authority of detention. This respect should be appreciated as an act of good will rather than obedience to the administration of detention. Indeed, the NPM is independent in its activity and during controls. It is not subject to the regulations of each place of detention and remains free to accept or reject the rules in force in the places of detention.

- **The golden rule is that, during the visits, the interviews with the people deprived of their liberty should be made without the presence of the people in charge of the place of detention, even if they absolutely want to follow the teams during the inspections. The best method of visit is to divide the controllers into several teams, which would limit the presence of the people in charge of the institutions visited.**
- **Gender balance within the NPM.** The question of designating a woman as head of the NPM is rather delicate from one country to the other (cf. the discussion in Senegal). However, gender balance should be respected when designating an NPM and thus a woman may be appointed as head of the NPM. This decision is at the discretion of the final designating authority.
- **The barriers that could prove an obstacle the establishment of an NPM, such as the NPM in Benin.**

On the one hand, such an obstacle can derive from the fact that the authorities want to designate the NPM by decree and not by statute. This was the case in Benin, where the designation process could only be relaunched after the Follow-up Committee of the Robben Island Guidelines visited Benin in October 2009. The solution recommended was to include the NPM in the Criminal Procedure Code, in the section on places of detention; an enforcement decree will further clarify the functions of the Observatory.

On the other hand, the obstacle may be due to the lack of follow-up and dynamism from the Follow-up Committees or the Coalition for the implementation of the OPCAT. This was the case in Benin, where the departure of some members from the Follow-up Committee resulted in delays in the process. It is therefore essential to maintain the necessary momentum and support until the NPM is effectively established.

2.3.4. Designation of national human rights institutions as NPMs

The role of the national human rights commission for human rights (HRCM) as NPM of the Maldives

Mr Mohamed Zahid, Vice-President of the HRCM, Maldives



1. Context leading to the designation of the HRCM as NPM

The Republic of Maldives ratified the Optional Protocol to the Convention Against Torture, Inhuman and Degrading treatment (OPCAT) on 15 February 2006. Subsequently, the Association for Prevention of Torture (APT) conducted a workshop in Maldives (24 - 26 April 2007) regarding the designation of an NPM.

During this period the Maldives was going through vigorous democratic and legal reform which posed time constraints on passing new and independent legislation for an NPM. The broad mandate of the Human Rights Commission of the Maldives in promoting and protecting human rights, which supported a detention monitoring function by conducting visits to places of detention and the provisions in its already existing legislation (HRCM Act 6/2006) was in compliance with the legal requirements of an NPM under OPCAT.

The government of the Maldives and its Human Rights Commission held dialogues with assistance from APT regarding the designation of the HRCM as NPM of the Maldives. With the guarantee from the state to the HRCM that provision

for financial and logistical independence and separate a budget from that of the Commission will be ensured, the government of the Maldives appointed the HRCM as the NPM of the Maldives on 2 December 2007.

2. NPM of the Maldives

The NPM of the Maldives comprises of a four staff team and a director. The functioning of the NPM is guided by the Vice-President of the HRCM and supervised by the Secretary General of the Commission. The Maldivian NPM team maintains gender balance as required by OPCAT. Complying with the recommendation from the APT, the Commission ensured that the Director of the NPM is from a social sciences background, has completed all monitoring trainings provided by the APT and has some background in International Human Rights Law. Amongst the two Assistant Inspection Officers, one has been with the NPM team since its creation and has completed APT training, and the other has 8 years of rehabilitation centres and programme management experience. As for the Inspection Officer Trainees, one staff is a fresh graduate who has been specifically trained by the HRCM in humanitarian law and given the opportunity of the APT detention monitoring training. The newest staff of the NPM is from an education background. This composition is a deliberate effort by the Commission to

bring in staff that will assist in fulfilling the mandate of the NPM.

The vision of the Maldivian NPM is to *'prevent torture and other ill-treatment of persons deprived of their liberty and promote a preventive culture throughout the Maldives'*. In order to achieve the strategic objectives under this vision, the NPM of the Maldives developed a strategic plan during a workshop entitled "Building an Effective NPM in the Maldives", conducted in Male' on 25-29 January 2009. The workshop was jointly facilitated by the Association for the Prevention of Torture (APT) and TC Team Consult.

This strategic plan has now been incorporated into the HRCM's strategic plan as part of the Commission's endeavour to achieve its strategic objectives.

"... the status of the HRCM gives the recommendations put forward by the NPM of the Maldives a standing that facilitates better consideration from concerned authorities and stakeholders."

3. Advantages and challenges related to the designation of existing NHRC as NPM

3.1. Advantages

- **Island Nations and the designation of NPMs**

For small island nations such as the Maldives, it does not require a large network of multiple institutions to monitor places of detention. National Human Rights Institutions serve as a cost effective option to function as NPM. As Human Rights are inter-related and interdependent, it helps independent bodies such as NPMs and NHRIs to evaluate and assess the whole system,

which then assists in contributing to a macro-level understanding of institutional mechanisms, which is a very crucial element in the five levels of monitoring places of detention (legal framework, public policies, institutions and actors, centre governance and functioning). It provides NPMs with both access and insight to specific areas that need to be addressed, especially in the legal framework, public policies and institutions and actors.

- **The status of NHRIs and NPMs**

In the Maldives, the HRCM is the first independent statutory body established in order to promote and protect human rights. It has played an instrumental role in the democratic reform process since its designation and thus the status of the HRCM gives the recommendations put forward by the NPM of the

Maldives a standing that facilitates better consideration from concerned authorities and stakeholders.

- **Averting from duplication of monitoring work**

The establishment of an NPM within the HRCM has enabled the Commission to utilise resources more effectively by elimination of duplication work in terms of monitoring torture, inhuman and degrading treatment and punishment in places of detention and ensuring the rights for persons deprived of their liberty. The HRCM believes that this in turn would assist it to report more frequently and effectively to international mechanisms regarding prevention of torture in the Maldives.

- **Support from NGOs**

HRCM recently established a network comprising of 49 NGOs in the Maldives working to promote and protect human rights in the country. This network ensures greater support for NPM recommendations and other important advocacy necessary for the prevention of human rights violations in places of detention.

- **Institutional support within the HRCM**

Article 21 of the HRCM act endows the commission with specific powers to monitor conditions relating to persons deprived of their liberty, thus asserting the importance of the prevention of torture, inhuman or degrading treatment or punishment by the HRCM.

In addition, the HRCM comprises of departments with specific mandates working to promote and protect human rights. As a result the NPM of the Maldives receives support from the legal department in commenting on national legislation regarding the prevention of torture, the fact that complaints from victims of human rights violations in places of detention during monitoring visits can be referred to the complaints department, has proven to increase the confidence of persons deprived of their liberty towards the NPM. Moreover, the Education and Media department conducts awareness programs for persons deprived of their liberty and human rights' training for prison officers contributing positively to the systematic and proactive changes the NPM aspires to bring.

- **Experts within the HRCM**

NPMs depend greatly upon independent experts to provide much necessary

professional opinion to analyse and propose constructive recommendations to concerned authorities. The fact that the HRCM has already assigned some staff as human rights focal points in certain fields (such as child rights, women's rights, disability rights, etc.) and are developing them to become experts in specific human rights areas is proving to be a prospective opportunity for the NPM to draw on expertise of such staff from the Commission itself.

3.2. Challenges

- **Continued labelling**

Like with almost all NHRIs, the HRCM is also burdened with the public perception that it works only for detainee rights. The reports and monitoring work of the NPM undoubtedly contributes gravely to this perception. It inhibits some endeavours of the Commission as recently the HRCM team was denied access to an island due to public rage triggered by a rumour regarding a complaint the HRCM was supposedly investigating about a murder suspect.

- **Government awareness of NPM mandate**

The fact that government institutions still find it challenging to embrace the mandate of the HRCM, coupled with its lack of awareness about the NPM mandate, catalyses negative reactions by state actors towards NPM and HRCM recommendations.

- **Funding Issues**

The Finance Ministry continues to review financial obligations of the state towards the NPM as part of that of the HRCM and thus shortage of funds remain a challenging area severely hindering fulfilment of the NPM mandate.

4. Need for adaptation/ reform of methods of work

Initially, the NPM was established as a unit within the Complaints Department of the HRCM, with staff appointed as staff of the NPM unit. With support from the APT, the HRCM brought about structural changes to accommodate the NPM as a separate department under the HRCM umbrella in January 2008.

As the current Commission Act does not unambiguously specify detention monitoring by a visiting body such as that of the NPM, the Commission has decided to proposed amendments to the legislative framework of the HRCM to denote the responsibilities and powers of the Commission to undertake the role of NPM.

The detention monitoring work carried out previously by other departments of the HRCM, such the complaints department and the Planning, Policy and Monitoring department, has been completely removed and the function is now being carried out only by the NPM functioning as the Commission's visiting body for preventive monitoring in places where people are deprived of their liberty.

With continued guidance and training from the APT, the NPM of the Maldives has adopted new methods and international best practice in carrying out its preventive monitoring role, where new monitoring tools and report writing and recommendation methods have been developed and adopted. This new exposure and better understanding has

contributed to a completely new approach to prevention of torture in Maldives by the HRCM.

This new development has nevertheless been a challenging concept to comprehend within the Commission and among stakeholders, where the proactive approach to preventive monitoring is often confused with the reactive decisions the Commission's needs to take in the protection of rights of persons deprived of their liberty.

In addition, the Government and civil society stakeholders are yet to fully imbibe the new role of the HRCM as the NPM of the Maldives.

5. Balance of NPM operations after a few years of functioning

There are obvious challenges in adopting this new function within the Commission as well as among stakeholders.

The HRCM has continually faced budgetary discrepancies for NPM activities due to a lack of understanding amongst government agencies regarding state responsibility to facilitate and fulfil its obligations towards the mechanism.

The Commission is yet to achieve the understanding of how to balance its preventive monitoring role and general human rights monitoring function.

In order to increase the efficiency of NPM operations, the staff needs to be better trained and given greater opportunities of experience.

“With continued guidance and training from the APT, the NPM of the Maldives has adopted new methods and international best practice in carrying out its preventive monitoring role... ”

6. Impact of SPT visit on NPM functioning

The 2009 SPT report on the Maldives contained a special chapter on the Maldivian NPM which assisted the mechanism by drawing government attention to state obligations under OPCAT. It also provided clear guidelines on changes that must be brought to strengthen the NPM of the Maldives as part of the HRCM. Most importantly, it underlined the importance of financial and functional independence of the NPM assisting the HRCM to carry out this new mandate.

7. Ways forward

The HRCM aspires to ensure legal status for the NPM within the HRCM act, in addition to strengthening the normative and structural basis of the mechanism within the Commission's structure.

Financial resources need to be guaranteed for the NPM of the Maldives as this undoubtedly stresses on fulfilling our mandate.

The HRCM is yet to guarantee professional experts needed for its work. A bigger staff unit and continued training and exposure are a necessity to build capacity of the NPM team.

The HRCM also needs to find ways to attract greater cooperation from government authorities in order to encourage implementation of its recommendations.

The indispensable role of international counterparts in building the capacity of the HRCM to fulfil its mandate as NPM has made it imperative upon the Commission to seek means to continue

this support and foster better relations with such entities.

The HRCM aspires to assist and encourage the establishment of NPMs regionally and worldwide under this model.

The potential of the Commission for Human Rights and the Administration of Justice (CHRAJ) as NPM in Ghana

Ms Anna Bossman, Commissioner of the CHRAJ, Ghana



We are talking here about the potential of the Commission of Human Rights and the Administration of Justice (CHRAJ) as NPM. The CHRAJ is set up under

Chapter 18 of the Constitution and Act 456, 1993. The Commission has three mandates: It is a National Human Rights Institution (NHRI), an Ombudsperson and an Anti-corruption agency. Our mission is to promote, protect and enforce fundamental rights and freedoms, administrative justice and integrity in Ghanaian society.

Under Act 456, the CHRAJ is empowered:

To investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power, and unfair treatment of any person by a public officer in the exercise of his official duties:

- To investigate complaints concerning the functioning of the public services, the administrative organs of the State, the armed forces, the police service, and the prisons service in so far as the

complaints relate to the failure to achieve a balanced structure of those services, or equal access by all to the recruitment of those services or fair administration in relation to those services;

- To investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under the Constitution;
- To investigate all instances of alleged or suspected corruption and the misappropriation of money by officials, and to take appropriate steps including reports to the Attorney-General and the Auditor-General, resulting from such investigations. We do not have prosecutorial powers. We can go to the High Court to have our decisions enforced. It is only the Attorney-General that has prosecutorial powers;
- The Commission also has the mandate to educate the public on human rights;
- To monitor and report on state of human rights in Ghana;
- To promote integrity within the public service;

“...because we are an NHRI we have a duty to ensure that the fundamental human rights of all people in Ghana, including prisoners, are respected, protected and promoted.”

- Act as an anti-corruption agency;
- In addition to these multiple functions, it is also empowered to investigate

confiscations of property made by the two previous military administrations

from 1981 to 1993 and return them under specified conditions;

- CHRAJ may stand in for children and apply to a Family Tribunal for a maintenance order for a child (under 18 years). Ref s.48 of the Children's Act (Act 560);
- We were recently given additional powers. It is one of the institutions that a whistleblower can make their reports to; and
- Under the Public Office Holder's Liability Bill we have to protect the Code of Conduct for Public Officers.
- We are category A under the ICC;
- We report to Parliament.

Monitoring of prisons

The Ghana Prison Service is the statutory body that has the responsibility for operating prisons in Ghana in accordance with the Prisons Service Decree of 1972 (NCRD 46), to operate all the prisons and police cells in the country. But because we are an NHRI we have a duty to ensure that the fundamental human rights of all people in Ghana, including prisoners, are respected, protected and promoted.

Over the years we have done quite a bit of monitoring of prisons and police cells, and have found that monitoring prisons and police cells has served to alert the authorities on the state of prisons and our reports and meetings have helped to improve some conditions in prisons. For example the costs of food ration/ funding given for feeding prisoners has increased so that prisoners have three meals a day, albeit modest meals. But also, because of the reports we have given some police cells to separate juveniles from adults. Were they don't have separate cells, they let the juveniles sit behind the counter. But these "improvements" have been few and far between and certainly not widespread. But we have to remember that these are

incremental gains over a period of time and they are important to establish better conditions.

Recently we had some bad incidents which highlighted the need for constant monitoring. Because of the monitoring, some actions were taken by the Inspector-General of the police and by the Attorney-General. Prisons, as in most places in Africa are really overcrowded. In one of the places we inspected the cell was only meant for about 15 people, and at the time we inspected it, there were about 36 people in this cell and of course the heat was very bad. I could only stay in it for about 5 minutes. When you get in there you start sweating, the place smells. It really is horrendous.

Just two weeks ago or so there was also the murder of a detainee in Kaneshie police station. He was apparently assaulted by another detainee, and also due to the overcrowding and really bad conditions in the prison.

CHRAJ POTENTIAL AS AN NPM

Existing mandate

Currently, the CHRAJ does not have a specific legal mandate to carry out preventive visits as is the case with the Uganda Human Rights Commission, where the Act provides expressly for such visits (Article 8(2)(1) of the *Uganda Human Rights Commission Act, 1997*). However, drawing on the role of its antecedent, the Ombudsman, which had the mandate to inspect detention facilities, the CHRAJ proactively initiated monitoring visits to detention facilities since 1995. These visits have, as it were, been institutionalised and expected by the authorities and by persons in detention, and have become annual visits. This nationwide exercise is undertaken every year and culminates in

the issuing of a prisons report which is submitted to the authorities.

We do undertake some follow up visits and sometimes take up specific cases. For example, we have taken up a case relating to the release of pregnant women or sick detainees. We will refer the matter sometimes to the Legal Aid Board.

Functional Independence (Art. 18.1 of OPCAT)

- Once Commissioners have been appointed by the Executive, we cannot be removed except by impeachment for stated cause (as with judges of superior court).
- CHRAJ makes its own regulations.
- The Commission hires its own staff, in consultation with the Public Service Commission.
- The Constitution guarantees the independence of the Commission.
- Commission reports annually to Parliament but we are independent of Government and are not answerable to the executive.

Financial Independence

- The Commission is a sub-vented organisation which means that it depends on the Consolidated Funds (Treasury) for its funding. It submits its budget to the Ministry of Finance and subsequently to Parliament for approval.
- CHRAJ does get some funding for specific activities from donors.
- Though the CHRAJ does not have specific funding for monitoring, we have managed to conduct effective monitoring without the requisite financial support by using the funds that we have. More substantial funds are required to do effective monitoring and to sustain our activities. (Art. 18.3 of OPCAT).

Composition (Art. 18.2 of OPCAT)

1. Professional background and capacities of members

The professional background of CHRAJ's monitoring team is varied because we use our own staff. We have people with legal, social science and research backgrounds. The team does not have medical staff on board, or a counsellor, though we can co-opt them under if it is needed for the circumstances.

2. Mechanism gender balanced? Does it have an adequate representation of ethnic, linguistic and minority groups?

The monitoring team which comprises representatives from the 98 district offices and 10 regional offices and 2 sub-regional offices nationwide, has an adequate gender and ethnic representation. It is not so gender representative because we have mainly men working for us, but a number of regional and district directors who lead the team are women. The teams are generally ethnically diverse. And this is very important because when you go to the different places it is important to speak to the inmates in their own local languages.

Our staff strength is about 760 nationwide.

Total access to all places of deprivation of liberty (Art. 20c of OPCAT)

- CHRAJ has no **explicit** mandate to carry out monitoring. In practice however, it has tacitly been given access and has been doing so since 1995.
- CHRAJ visits police stations cells, prisons, centre for minors (Borstal Institution), refugee camps, psychiatric institutions, etc. CHRAJ has not tried to visit immigration facilities nor military detention

facilities mostly because of resource constraints and not necessarily because of lack of access. However, it is evident that there are comments from the military that they would resist visits for “security reasons” unless we have express legal mandate.

Method of visit

- We launch the nationwide exercise annually. This covers approximately 500 police cells and 45 prisons. We announce this ahead of time by giving notification (not seeking permission) to the Ghana Police and Prisons. We give them a range of dates, and say that our visits are going to start from a particular month. We launch it on a particular day where we invite the media along.
- Subsequently visiting teams then proceed according to their respective schedules to visit and conduct follow up visits.
- We are allowed to tour all parts of the facility which includes the kitchen, cells, sanitary facilities, infirmary, refectory, library, vocational workshop, condemned cells, solitary confinements and other parts. Although at times the prison authorities have asked us not to visit a particular section because they believe it might be hazardous to us. For example there was a time when we were going to the remand cells which were holding about 300 prisoners and they were very, very agitated. So the prison authorities said that they felt that if we went in there would be more agitation and we might not come out alive. So we did not go in there.
- The visit begins with introductory discussions with the officer in charge to introduce the members of the visiting team and to explain the

purpose of the visit. We usually tell them that we would like to speak to the inmates without the presence of wardens. Sometimes we are given that opportunity, sometimes we are not. But as we said, that since there are a number of us they can't follow us everywhere, so some of the members have the opportunity to speak to the inmates without the supervision of prison wardens.

- At the end of visit a “debriefing” is done with prisons authorities. Some inmates (specifically the remand prisoners) are encouraged to tell their stories and some of the lawyers can take up their cases.

Monitoring tools, reports and conducting of interviews in private

- The CHRAJ uses a monitoring tool (these are questionnaires based on the UN Minimum Standards for the Treatment of Prisoners and Detainees) as a guide in the conduct of its monitoring visits.
- Interviews are usually conducted in the presence of detaining officers and seldom in private (Art. 20 d and e of OPCAT), but we have sometimes got away with conducting some of the interviews in private.
- Reports have been compiled following the visits since the onset of monitoring visits, except for 2007, when the report was incorporated in the human rights status report. A decision was however taken to revert to publishing findings separately.
- The report also includes the findings on the conditions of prison guards and wardens.

Project work

One of our directors is engaged in project research work and she is staying in a prison facility. She is living with the

prisoners and observing and writing all about the realities of prison life. Her work will impact on our monitoring and guide future recommendations.

Unannounced visits

- The CHRAJ has been quite successful in the conducting of a few unannounced visits, though in most cases, as I said, it notifies relevant detaining authorities of an intended visit beforehand.
- There have been some few instances that the CHRAJ refused to conduct a visit due to refusal by prison authorities to allow access of media personnel to accompany the monitoring teams. As a form of protest we informed them that we were not going to visit. This was a double edged sword because the prisoners were very disappointed when they were informed we were not coming. But we were trying to make a point, and the point we were trying to make was taken into consideration, the following time we went to visit the media were allowed, and in some instances they were allowed to take pictures.

The role of the media

A key partner for us is the media in creating visibility about findings and in the launch of monitoring visits (in some regions). We are very cautious in involving the media in actual monitoring visits, for fear of misrepresentation and confidentiality about sensitive findings such as on torture and ill treatment. We are careful that we select media personnel who will not

sensationalise the visit or misrepresent it. Some of the information is confidential, for instance if a prisoner complains of torture you do not want reprisals, so you do not want the media to take their pictures or to take their names or things like that.

Legal guarantee that persons in contact with the mechanism will not be sanctioned (Art 21.1 of OPCAT)

So far there has been no report of persons in contact with CHRAJ who have faced reprisals. But this is difficult to find out. One of the things the lady who is in the prisons will be able to tell us is whether or not there are reprisals after our visit. But we will require a legal basis to ensure legal guarantee that persons in contact with the mechanism will not be sanctioned.

Training/ capacity-building on detention monitoring

We do annual trainings (at the beginning of the year) and periodic trainings are held for all regional directors and representatives from the districts and educational and research officers. Usually about 40 participants attend.

Designation of one or several NPMs

The CHRAJ has worked in active cooperation with civil society groups, human rights NGOs and other relevant national actors. We do get useful information from all of them on detention facilities and the status of human rights of detainees, and these have been regularly made available to the public.

“CHRAJ has high expectations that the government will expedite efforts to ratify OPCAT and commit to ... proactively publicise the process and opportunities for participation, and thereby facilitate the implementation of OPCAT.”

The designation of one or several NPMs will depend on the recommendations of the working committee (WC) that CHRAJ has put in place to initiate the discussion on their establishment. The working committee will draw on the recommendations of the APT on the establishment and designation of NPMs to prepare a factual “inventory” of bodies in the country that already carry out visits to places of detention such as the Amnesty International, Ghana Prisons Fellowship, etc.

As is required by the OPCAT we will take into account the scope of jurisdiction, number of members and staff, functional independence, office locations, budget and working methods, etc. Based on this factual information, the Committee will, in collaboration with relevant agencies, determine whether to consider setting up multiple NPMs or to designate the CHRAJ as Ghana’s NPM. Whatever happens, the CHRAJ will still continue with inspection of police and prison cells.

Other options are that agencies such as Amnesty International (which organises reactive visits), Ghana Prisons Fellowship (which organises humanitarian visits) and CHRAJ may themselves constitute NPMs.

The challenges that could be associated with other existing bodies being appointed as an NPM are that:

- Some of these bodies do not cover all places of detention as defined in OPCAT;
- There may be duplication of work;
- Existing bodies may not have a tradition and reputation for institutional independence and this could lead to credibility problems;
- Existing bodies may not have a multidisciplinary range of expertise which the CHRAJ claims to have.

The working committee is expected to discuss these issues and other related ones extensively and to submit relevant recommendations for consideration.

The CHRAJ has high expectations that the government will expedite efforts to ratify OPCAT and to commit to supporting the working committee in the designation of one or several NPMs, as well as proactively publicise the process and opportunities for participation, and thereby facilitate the implementation of OPCAT.

I would just like to mention that CHRAJ has an **Access to Justice Programme**.

CHRAJ is a member of a high level stakeholders group under the Access to Justice Programme funded by the UNDP. One of its aims is to deal with the congestion in our prisons, to resolve the situation of remand prisoners, ensure the expeditious handling of their cases. One innovation is the holding of courts in the prisons to handle remand cases. The group comprises the Minister of Justice and Attorney-General, the Chief Justice, the Inspector-General, the Minister of the Interior, the Director Legal Aid Board, the Commissioner CHRAJ of Police and the Director of Prisons.

In summary, the advantages of CHRAJ as NPM:

- CHRAJ’s functional independence is guaranteed under the Constitution.
- Commissioners have security of tenure and immunity.
- CHRAJ has over the years demonstrated its independence and has gained considerable credibility and public legitimacy.
- CHRAJ has established sustained working relations with human rights NGOs/ CSOs and we host an NGO forum in our headquarters.

- Members of the monitoring team have developed competencies and enhanced their capacities in monitoring prisons.
- Monitoring reports concerning conditions and the human rights status of detainees are issued and made available to the public.

Challenges

Amendment to existing legislation (Act 456) so that we may be given specific powers. We will be taking advantage of the current constitutional review to ensure that the monitoring of police and prisons cells be included as part of our mandate.

- We have, of course, inadequacy of resources, not only financial and material, but also human.
- We need to develop specific competencies and capacity of monitoring staff. The training that we give them is not really enough.
- The wide mandate makes it hard to be focused just on the plight of detainees which then also goes to show the position that a separate NPM should be set up with a specific focus.
- If we are designated, we will have to adopt a new approach and strategies and have a special team or department to undertake visits.

Current state of affairs/ state of play

Ghana ratified the CAT in 2002 and became a signatory to the OPCAT on 6 November 2006. It has not ratified OPCAT yet. However, CHRAJ in collaboration civil society organisations (CSOs) has been lobbying government as well as key stakeholders towards OPCAT ratification. In June 2006, CHRAJ sponsored and hosted roundtable

discussions in respect of the ratification of OPCAT. In April 2008, CHRAJ organised a Consultative Workshop for stakeholders on the ratification of the OPCAT jointly with the APT. The outcome of this workshop resulted in the setting up of a Working Committee (WC) comprising selected civil society organisations to campaign early ratification of the OPCAT, as well as mapping strategies for its implementation after ratification.

The WC is made up of representatives of the following organisations:

- CHRAJ – host and chair
- Ministry of Foreign Affairs
- Attorney General’s Office
- Prisons’ authorities
- Ghana Bar Association (GBA)
- Amnesty International
- Ghana Journalists Association (GJA)
- Centre for Democracy and Development (CDD).

WC Activities

In September 2009, CHRAJ in collaboration with the WC, hosted a high level delegation of the Association for the Prevention of Torture (APT) led by

Mark Thomson, Secretary General and Audrey Olivier, who visited Ghana to promote ratification of the OPCAT. The WC was able to facilitate meetings of the APT with the following state officials:

- First Deputy Speaker of Parliament
- Attorney General & Minister of Justice
- Minister of the Interior
- Director General, Ghana Prison Service
- Chief Director, Ministry of Foreign Affairs

“The wide mandate makes it hard to be focused just on the plight of detainees which then also goes to show the position that a separate NPM should be set up with a specific focus.”

In addition, the APT delegation had discussions with the Commissioner, Deputy Commissioners and Directors of CHRAJ, as well as members of the WC aimed at strategising for early ratification of OPCAT by Ghana. I believe that we are really making the right noises, but we really have to move on with it.

There is a proposal developed by the WC to elicit the necessary support of the targeted groups for early ratification of OPCAT. One of the objectives of the WC is to develop an advocacy campaign so that we can get the support of all involved. The project was scheduled to commence in January 2010 to June 2011 (i.e. spanning a period of 18 months). It is sort of limping along.

Way Forward

- Lobbying targeted state institutions/ officials such as Ministers of Interior, Foreign Affairs, Attorney General and Minister of Justice, Members of Parliament and Chief Directors of selected Ministries.
- Training and education for Security Personnel.
- Documentation of the State of Affairs in the prisons and other detention camps.
- Capacity building for selected CSOs and security personnel
- Advocacy campaign – media sensitisation (TV/ radio panel discussions, press conferences), roundtable conferences, etc.
- Establishment/ designation of Ghana's NPM.

Proposed Plan of Activities of the WC

Objective 1: Ratification

To ensure that the Government of Ghana will ratify the UN Optional Protocol on the Convention Against Torture and become one of the States Parties to the

OPCAT by June 2010. This date is important as Parliament rises in July and returns in October. Therefore if we want to do something before October, we need to do so before Parliament rises.

Objective 2: Designation

To designate an NPM established and functioning by December 2010.

Objective 3: Public education

To create awareness on the CAT among the population of Ghana by December 2010.

Objective 4: Training

Three hundred (300) selected representatives of Security Agencies (police, prison service, customs, excise & preventive services (CEPS), immigration services, etc.) will receive training in and education on prevention of torture and all forms of ill-treatment of suspects and people under detention.

Objective 5: Research: status

Obtain first hand information on conditions at prisons and police cells in Ghana. This will be collected and documented for sharing with appropriate authorities by December 2010.

Objective 6: Capacity building

Developing the capacity of civil society, including journalists, traditional leaders, political & government officials, and religious leaders. This is to bring them into monitoring teams which monitor and report on the situation of torture in the country.

Objective 7: Implementation

The final objective is implementation, implementation, implementation.

2.3.5. Participants' Discussions

The discussions focused on the following points:

- **The type of mechanism to be established.** It clearly appeared that **each State Party should follow its own path** because there is no single model of NPM. **However, if the choice is about the designation of an existing national human rights institution, then the NPM needs a separate budget from that of the institution in question.** One must individualise the NPM. This means clearly define the legal basis of the NPM, create a specific unit within the existing institution, assign a separate budget, etc.
- **The fulfillment of the mandate of the NPM.** The prevention of torture is not a "gala dinner." The exercise of the preventive mandate will thus face various difficulties and objections. For this reason, the NPM must show great responsibility and avoid errors that would damage its credibility.
- **The designation of an NPM as a national institution** under the control of the executive raises the issue of independence, credibility and effectiveness.
- **The NPM and the Robben Island Guidelines.** The NPMs will need to apply the Robben Island Guidelines, which are preventive and reference tools to assist the NPMs in the performance of their duties.



3. WORKING GROUPS

3.1. Working Group 1

Interaction between actors of torture prevention in Africa

Results of working group 1

Ms Caroline Ouaffo Wafang



Introduction

The objective was, through discussion and the sharing of experiences and relevant analyses, to assess the interaction of NPMs with other actors of prevention and formulate recommendations and proposals for better cooperation between the NPMs and the various stakeholders, so that the prevention of torture in Africa can be even more effective.

Points of discussion

- Identify the stakeholders for the implementation of the prevention of torture at the national, regional and international levels;
- Assessment of the situation, current degree of involvement of stakeholders in this dynamic;
- Proposals for greater involvement / optimisation of the dynamic / recommendations.

1. Identifying the actors

There are three categories of actors at the national level:

- Most concerned individuals: victims, prisoners and their families, former inmates, prison service unions and the actors who are close to these people (chaplains, psychologists, NGOs and other structures).
- National institutions and other organisations involved in the protection of human rights. It is necessary to establish partnership frameworks to avoid unnecessary bureaucracy: ministries, national human rights institutions, institutions for the defense of human rights (such as the Truth, Justice and Reconciliation Commission in Togo, the Ombudsman, etc.), and judicial actors.
- Institutions and bodies, which, by their actions, can positively influence the work of the NPMs (academic researchers, trade unions, parliamentarians, etc.).

At the international, regional and subregional levels, several institutional players (ECCAS, EU, etc.) have a role to play in supporting the work of the NPM, helping with methodology issues and even providing the necessary impetus. These actors may:

- Facilitate the networking of NPMs by creating specific networks or by integrating into existing networks. Through the exchange of experiences and good practices, these networks can have a ripple effect on the States that have not ratified the OPCAT or on the functioning of NPMs;
- Provide technical or financial support to NPMs;
- Facilitate partnerships between networks of African NPMs, with the NPMs of different sub-regions and at the intercontinental level, and with other international actors such as the SPT, the Special Procedures or the United Nations Human Rights Council.

2. Opportunities for interaction

The experts support the stakeholders at the national and international levels through various types of support, technical relay and assistance, and methodological advice.

Three types of interactions should be developed: dialogue, cooperation and monitoring/follow-up.

- **Dialogue**

A willingness to engage in dialogue on the part of all stakeholders is essential to the success of the NPMs. This dialogue should primarily be developed between national actors. For this, we should develop frameworks for communication and consultation with everyone, including with the actors who are not committed to the cause of preventive detention monitoring, who can be called "good enemies", or also those who might be a relay but do not necessarily have a good knowledge of the issue of torture (parliamentarians, for example).

- **Cooperation**

Cooperation can be multifaceted. It may include providing technical, financial, methodological support and facilitation in seeking funding for the functioning of NPMs, as the ECCAS already does in other areas, or more generally for the improvement of the conditions of detention (ICTR, for example).

It can also take the form of methodological support through advice and training sessions to promote interregional cooperation, particularly with the CPTA, the other NPMs, and the SPT.

- **Monitoring /follow-up**

It would be important to establish mechanisms for the exchange of good practices that would facilitate the work of self-assessment by the NPMs, to ensure their long term credibility; hence the idea of putting in place intercontinental or sub-regional meeting frameworks between the NPMs or networks of NPMs and the importance accorded to the parliamentarians in controlling the action of the NPMs.

List of members of working group 1

Chair: Mr Jean-Baptiste Niyizurugero

Rapporteur: Ms Caroline Ouaffo Wafang

Members:

1. Mr Eric MONTCHO-AGBASSA
2. Mr Abdoulaye BABOU
3. Ms Caroline BOATENG
4. Ms Anna BOSSMAN
5. Ms Aissata COULIBALY
6. M. Edouard DELAPLACE
7. Mr Jean-Marie DELARUE
8. Mme Claudia D'ESPOSITO
9. Mr Oumar DIALLO
10. Mr Mahamane CISSE-GOURO
11. Ms Martine HENNEQUIN
12. Mr Bernard J. Ngamo KAMENI
13. Mr Ghislain Patrick LESSENE
14. Mr Abdoul Aziz LOUM
15. Mr Mandiaye NIANG
16. Mr Jean-Baptiste NIYIZURUGERO
17. Mr Gaspard ONOKOKO
18. Mr Feyi OGUNADE
19. Ms Nicole RECKINGER
20. Mr Abderrazak ROUWANE
21. Ms Suzanne SOUKOUDE
22. Mr El Hadji Malick SOW
23. Mr Danny TITUS
24. Mr Mamadou THIANDOUM
25. Mr Jarwlee TWEH GEEGBE
26. Ms Caroline OUAFFO WAFANG
27. Ms Lucienne Ariane ZOMA

3.2. Working Group 2

NPMs in action: How do NPMs work/how will they work? The functioning of NPMs

Results of working group 2

Madam Uju Agomoh



Introduction

The working group used the discussions and presentations of the conference in order to analyse the efficiency of National Preventive Mechanisms and identify the main obstacles and difficulties to carrying out the mandate for prevention of torture and other forms of ill-treatment. The working group was also asked to explore practical solutions aimed at overcoming these difficulties, taking as its inspiration the examples of existing National Preventive Mechanisms discussed during the conference.

The working group identified eight elements "guaranteeing" the efficiency of National Preventive Mechanisms, as follows: philosophy of prevention; transparency; independence; information; follow-up on cases of torture and other forms of ill-treatment; full coverage of places of detention; budget; creativity and economy.

The participants subsequently put forth practical and creative propositions for coping with the challenges arising from the designation of an institution as National Preventive Mechanism and in achieving efficiency.

Points of discussion

- Identify the elements of efficiency in the National Preventive Mechanisms and the difficulties in their functioning.
- Explore the practical solutions guaranteeing the efficiency of the National Preventive Mechanism.

The elements of efficient functioning of the National Preventive Mechanism were amply developed during the discussions of the group.

1. Philosophy of prevention

By way of introduction, Working Group No. 2 stressed the importance of understanding the philosophy behind the National Preventive Mechanism. The NPM is a surveillance, a *monitoring* body, whose working basis is cooperation with the State Party.

2. Transparency

It is essential that the activities of the National Preventive Mechanism and the designation of its members be transparent.

3. Independence

To be efficient, the National Preventive Mechanism must be independent and be perceived as independent. Independence concerns several aspects of the mandate and of the composition of the National Preventive Mechanism, such as:

- Personnel
- Methods in visiting places of detention
- Familiarity with and relations with the pertinent actors
- Content, form, and follow-up on recommendations

4. Information

The NPM seeks to gather trustworthy and credible information on the extent of deprivation of liberty in the countries concerned. Research and collection of information is fundamental to the work of monitoring places of detention and is not an easy task. It is necessary to acquire the confidence of prison staff and of persons deprived of their liberty, and to systematically cross-check the information obtained. Information can be obtained from former prisoners and from external organisations and persons with access to prisons.

Care should be taken to protect persons collaborating with the National Preventive Mechanism, or "informers": this protection should be anchored in the law establishing the National Preventive Mechanism.

5. Following up on cases of torture and other forms of ill-treatment

During the discussions it was suggested that the Subcommittee on Prevention and the National Preventive Mechanisms could deal with urgent situations involving cases of torture and other forms of ill-treatment during their visits in the places of detention. Nevertheless, such cases should be referred to the departments of investigation and to the pertinent institutions such as the national human rights institutions, the judicial authorities, or non-governmental organisations, so that they can carry out the necessary follow-up measures. The persons concerned should be informed of the time required for intervention of these institutions and organisations. In view of this delay, the bodies of the Optional Protocol can take concrete measures to protect these persons, in particular during visits to the places of detention. The National Preventive Mechanisms must demand an immediate stop to violations in order to be credible.

6. Full coverage of places of detention

In view of the diversity and number of places of detention to be visited, certain aspects should be examined so as to make the National Preventive Mechanism as efficient as possible:

- The institutions in charge of detention facilities can have different degrees of transparency in their functioning;

- The degree to which the hierarchy takes responsibility for a violation in a place of detention;
- Different places of detention can be governed by different norms and standards (prisons vs. psychiatric institutions);
- The existence of different internal and external organisms of surveillance of places of detention, which implies the necessity of aligning their mandate with the criteria of the Optional Protocol;
- The structural complexities of the State Parties (for instance, a federal state).

In view of these considerations, practical solutions can be examined, such as:

- Make use of NGOs in order to have access to the entirety of a territory (cf. Maldives);
- Promote a culture of transparency within detention facilities through campaigns to stimulate greater awareness;
- Ensure coordination between the different organs (in the case of multiple mechanisms) and relations with all government agencies concerned with places of detention.

7. The budget

An entirely separate budget and financial autonomy are guarantees for the efficiency of the National Preventive Mechanism.

In certain countries, these financial guarantees are difficult to obtain and the National Preventive Mechanisms must therefore explore economic and creative solutions to achieve their mandate. The necessary budget requirements must therefore be identified, and it is essential that all expenses be justified.

8. Being efficient, as well as creative and economical

The participants in the working group explored several practical, economic, and creative solutions contributing to the efficiency of the National Preventive Mechanism:

- establish partnerships with organisations from civil society in carrying out the mandate of the National Preventive Mechanism;
- the structure of the National Preventive Mechanism must not be too complex, and it should be based, if possible, on existing institutions and budgets;
- Parliament should be urged to grant sufficient financial means. The parliament plays a decisive role in ratification and in adoption of the law putting into effect the Optional Protocol;
- Make use of financing from the Special Fund of the Optional Protocol (Article 26), when such funds are available.

Certain activities of the National Preventive Mechanism can be relatively economical:

- meetings with the authorities and other pertinent actors in the area of prevention of torture;

- evaluating the extent to which national regulations on the deprivation of liberty conform to international standards and, if necessary, taking steps to amend them;
- facilitating relations between persons deprived of their liberty and the custodial authorities;
- encouraging other organisations to take part in certain activities of the National Preventive Mechanism (such as NGOs or national human rights institutions);
- setting priorities relative to the situation concerning deprivation of liberty.

9. Next steps

Following their discussions, the participants identified several steps to be followed to ensure the efficiency of the National Preventive Mechanism:

- insist that the mandate for members of the National Preventive Mechanism be guaranteed, and that the mechanism has functional independence;
- reinforce the capacities of members of the National Preventive Mechanism so that they can efficiently carry out their activities;
- Make the different national actors aware of the mandate of the National Preventive Mechanism and of their responsibilities in the area of prevention of torture and other forms of ill-treatment;
- Have a coordinating body that analyses the reforms necessary in the legislative and financial areas.

List of members of working group 2

Chair: Ms Audrey Olivier

Rapporteur: Ms Uju Agomoh

Members:

1. Mr Ahoro Atchindé AMAKOUE
2. Ms Uju AGOMOH
3. Ms Ezonebi Blessing AZORBO
4. Ms Maria BERENGUER
5. Mr Musa BITAYE
6. Mr André DEMBELE
7. Mr Oumar DIOUF
8. Ms Amanda DISSEL
9. Mr Binaye Kumar GOURY
10. Mr Zdeněk HÁJEK
11. Mr Denis MINEKPOR KOKOU
12. Ms Augustine MENDY
13. Mr Lukas MUNTINGH
14. Mr Diène Ndiaye
15. Mr Assane Dioma NDIAYE
16. Ms Kabyr NDIAYE
17. Ms Awa NDOUR
18. Ms Peace Gifty Sakyibea OFEI
19. Ms Audrey OLIVIER
20. Mr Hervé RIVIERE
21. Mr Boubacar Sidiki SAMAKÉ
22. Ms Kadidia SANGARÉ
23. Mr El hadj Abdoulaye SECK
25. Mr Thierry Souleymane SECK
26. Mr Mark THOMSON
27. Mr William Z. TOGBA
28. Mme Isabelle TSCHAN
29. Mr Patrice VAHARD
30. Mr Patrick VAN WEERELT
31. Mr Donald Armel YAMEOGO
32. Mr Mohamed ZAHID
33. Ms Marie-Gisèle ZINKPE

4. Dakar Plan of Action



**African Commission for
Human and Peoples Rights**



**Association for the
Prevention of Torture**



**Amnesty International
Senegal**

Conference on the Prevention of Torture in Africa

27-28 April 2010, Dakar, Senegal

Final Document

Dakar Plan of Action:

8 points for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Africa

From the 27 to 28 April 2010, the Association for the Prevention of Torture (APT) and Amnesty International Senegal, in collaboration with the African Commission on Human and Peoples' Rights (ACHPR), jointly organised a timely regional conference on Prevention of torture with a particular focus on the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The event was held under the auspices of the Ministry of Justice of Senegal and brought together representatives from States Parties and Signatories to the OPCAT, including Government Ministries, National Human Rights Institutions, National Preventive Mechanisms (NPMs), the United Nations Sub-Committee for Prevention of Torture (SPT), the United Nations Office of the High Commissioner for Human Rights, the African Commission on Human and Peoples' Rights, the Economic Community of Central African States, as well as Civil Society Organisations.

The two day focused discussion on torture prevention in Africa led to the adoption of the following "Dakar 8 point Plan for Prevention of Torture in Africa".

The participants at the Africa Torture Prevention Conference,

Considering the obligation of States to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment as reaffirmed in:

- the UN Convention against Torture and other cruel, inhuman or degrading treatment or punishment (UNCAT, Articles 2 and 16) and its Optional Protocol (OPCAT);

- the African Charter on Human and Peoples' Rights (Article 5);
- the International Covenant on Civil and Political Rights (Articles 7 & 10);
- the Guidelines and Measures for the Prohibition and Prevention of Torture and other Cruel, Inhuman or Degrading Punishment or Treatment in Africa (Robben Island Guidelines);

Recalling the need for States to take concrete measures to implement their torture prevention obligations, in particular the provisions in the OPCAT, and especially the establishment of National Preventive Mechanisms;

Noting that regular monitoring of all places where persons are, or may be, deprived of their liberty is one of the most effective tools to prevent torture and other forms of ill-treatment;

Building on the steps already taken by African countries to effectively prevent torture and other forms of ill-treatment;

Adopt and propose the following plan of action and steps to be taken by States, the African Commission on Human and People's Rights, National Human Rights Institutions, National Preventive Mechanisms, civil society organisations, as well as by any other relevant actors:

1. Ensure an effective framework to prevent torture and other forms of ill-treatment

- a) Utilise and strengthen existing oversight mechanisms of all places of detention, including visits by judges, magistrates, national human rights institutions, civil society organisations and internal inspecting mechanisms;
- b) Assess the domestic compliance of national legislation with the UNCAT and other international and regional norms, and if missing, adopt legislation criminalising torture;
- c) Strengthen legal and procedural safeguards related to deprivation of liberty, including providing for access to lawyers, medical practitioners, and access to families and third parties;
- d) Ensure the independent investigation of individual complaints;
- e) Promote a culture of prevention with a wide range of actors, through public awareness campaigns and trainings on human rights and, in particular, prevention of torture and ill-treatment;
- f) Acquire credible information on the treatment of persons deprived of their liberty.

2. Take steps to sign and ratify the Optional Protocol to the UN Convention against Torture (OPCAT)

- a) African States that are already party to the UNCAT should further demonstrate their commitment to prevention of torture by signing and ratifying the OPCAT;
- b) African States that have signed the OPCAT should take all the necessary measures to ratify it as soon as possible;
- c) Current and future African States Parties should present independent and competent experts as candidates for the 28 October 2010 elections of the UN Subcommittee on Prevention of Torture.

3. Promote public, transparent and inter-sectoral dialogue on the effective implementation of the OPCAT

- a) National examinations on the implementation of the OPCAT should include all relevant actors, such as: parliamentarians, governmental officials, national human rights institutions, civil society organisations, relevant unions, victims of torture and organisations representing persons deprived of their liberty;
- b) Relevant civil society organisations are encouraged to form coalitions to strengthen their role and impact in the OPCAT ratification and implementation campaigns;
- c) National dialogue should be followed by the establishment of inter-sectoral OPCAT working committees/ groups to ensure the ratification of the OPCAT, designation, establishment, and effective functioning of the NPM.

4. Decide and develop the most appropriate NPM according to the national context

- a) Acknowledge that the purpose of the OPCAT and NPM is to prevent torture and other forms of ill-treatment through: regular and frequent visits to all places of detention; collecting credible information on risks of abuses; engaging in constructive dialogue and intervening with concrete and tailored measures to reduce risks and improve conditions of detention; and reporting on the treatment, conditions and administration of places of deprivation of liberty;
- b) Consider all possible NPM options on the basis of the analysis of existing monitoring bodies in light of OPCAT criteria taking into account their effectiveness, and devise the most appropriate structure taking into consideration the UN Subcommittee on Prevention of Torture views;
- c) Designate NPM by law or constitutional amendment;
- d) Anchor key elements of the NPM mandate in its founding legislation, including a wide definition of places of deprivation of liberty; NPM powers and guarantees; composition and necessary financial resources; and functional independence;
- e) Establish separate NPM budget and guarantee public funding;
- f) Request the OPCAT Special Fund, managed by the UN OHCHR, to provide funds for NPM educational programmes once funds become available.

5. Establish composition and clear internal organisation of the NPM

- a) NPM members must be nominated and appointed in an open and transparent process;
- b) NPMs should be comprised of independent and committed experts coming from a wide range of expertise as provided for in the OPCAT including social workers and psychologists. Experts should also be seen to be credible and neutral;
- c) NPMs should be gender balanced and, where relevant, representative of different ethnic groups;
- d) When designating an existing institution as NPM, the budget should be ring-fenced and a separate unit should be created;
- e) Clear rules of procedures should be established, including decision-making processes.

6. Establish strategy and working methods for the NPM

- a) Make provision for the employment of full-time staff, contracting of part-time staff and volunteers, and contracting in experts;
- b) Provide training and capacity development to NPM members and staff;
- c) Provide for cooperation and collaboration with other oversight and monitoring bodies;
- d) Determine frequency of visits, monitoring methods and tools, protocols and provide for a monitoring programme on unannounced and scheduled visits;
- e) Draft strategic planning for the NPM;
- f) Ensure NPM engagement and dialogue with persons deprived of their liberty before, during and after visits;
- g) Ensure ongoing dialogue and relationship with detention authorities to prevent torture and other forms of ill-treatment from occurring, and find solutions to improve the treatment and conditions of people deprived of their liberty;
- h) Take measures to prevent reprisals against people, especially persons deprived of their liberty, who communicate with the NPM. This could include specific provisions in the NPM founding legislation, as well as conducting follow-up communication and visits;
- i) Create procedures for monitoring and follow-up of recommendations and persevere with authorities to ensure their implementation;
- j) Preventive monitoring should entail analysis and understanding of all factors which lead to abuses in places where people are deprived of their liberty, and compiling reports on findings;
- k) The NPM should regularly review its working methods and assess its impact in order to strengthen capacity and improve its effectiveness.

7. Encourage NPMs to make relevant recommendations for improvement of treatment and conditions for people deprived of their liberty

- a) Explore cost effective and realistic recommendations for improvements with immediate, short term and long term objectives;
- b) The NPM should have the capacity to respond to immediate concerns of torture or ill-treatment, including referring individual cases to relevant institutions;
- c) NPM annual reports should be publicised and disseminated to international, regional and national actors.

8. Cooperate and collaborate with national, regional and international actors and partners

- a) Ensure ongoing dialogue between NPMs and parliamentarians and judiciary to change policies and practice;
- b) NPM should, where relevant, establish partnerships and cooperation with community based structures and civil society organisations to have greater outreach and access to information;
- c) Create an interface between the UN Subcommittee on Prevention of Torture (SPT), the Committee for the Prevention of Torture in Africa (CPTA), and National

- Preventive Mechanisms, to exchange information, to conduct trainings, to convene workshops and seminars, and to coordinate joint publications on torture prevention issues in Africa;
- d) Explore collaboration between National Preventive Mechanisms and African Economic Communities;
 - e) The State should account regularly to the UN Committee against Torture (CAT), the Universal Periodic Review of the Human Rights Council (UPR), the African Commission on Human and Peoples' Rights (ACHPR), and Special Procedures of these bodies (including CPTA and UN Special Rapporteur on Torture) on national compliance with the UNCAT, the OPCAT, the Robben Island Guidelines and other relevant instruments;
 - f) NPMs should create networks to facilitate exchange of information and best practices.

Done in Dakar on 28 April 2010

5. Annexes

Annex 1

Background Document



Conference on the prevention of torture in Africa

27-28 April 2010, Dakar, Senegal

Introduction

The Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), is setting up an innovative system for the prevention of torture and other forms of ill-treatment, composed of international and national preventive bodies. At an international level, the OPCAT has created a Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), consisting of ten independent experts. In addition, by ratifying the OPCAT, States acquire the obligation to designate one or more preventive bodies at a national level, also known as National Preventive Mechanisms (NPMs). The OPCAT preventive bodies (SPT and NPMs) have similar functions. The task of the SPT and NPMs is to conduct regular, preventive visits to all places of detention, in view of making recommendations and proposing practical measures to improve the system of deprivation of liberty and the conditions of detention. In addition, they present their observations and comments on existing and draft legislations relating to the deprivation of liberty.

The OPCAT came into force on 22 June 2006. There are now 50 State Parties and 24 Signatory States to the OPCAT. Following the 50th ratification of the OPCAT in September 2009, the number of experts in the SPT will be increased from 10 to 25. Elections will take place on 28 October 2010 and will represent an opportunity for the African States to present independent experts in the prevention of torture and other forms of ill-treatment.

The Association for the Prevention of Torture (APT) is at the origin of the drafting, adoption and entry into force of the OPCAT. The APT is now working worldwide for the ratification and effective implementation of the OPCAT. In this context, the APT organises on 27 and 28 April 2010 the "*Africa Torture Prevention Conference*" which takes place in Dakar, Senegal. The Dakar Conference will bring together OPCAT States Parties and Signatory States in Africa, with the following aims:

- a) promoting the prompt ratification of OPCAT by the Signatory States;
- b) promoting, stimulating and supporting an open, participatory process for designating effective NPMs in the State Parties that have not yet set any up;
- c) fostering exchanges of experience and good practices regarding the set-up and operation of NPMs in Africa;

- d) and creating a regional dynamic and encouraging the interaction and cooperation of African NPMs with each other, with the NPMs of other regions, and with the SPT and the Committee for the Prevention of Torture in Africa (CPTA).

The Conference will be a forum where practical measures and initiatives can be discussed and proposed concerning two particular topics: the establishment, reinforcement and re-energising of an interactive effort between the various preventive actors in Africa, and the efficient operation of NPMs in Africa.

1. Review of the OPCAT in Africa: trends and perspectives

Six States have ratified OPCAT in Africa (Benin, Liberia, Mali, Mauritius, Nigeria and Senegal), and four of these have designated their national preventive mechanisms (Mali, Maurice, Nigeria and Senegal). In addition, ten African States have shown their interest in the prevention of torture and other forms of ill-treatment by signing the OPCAT (Burkina Faso, Cameroon, the Republic of Congo, Gabon, Ghana, Guinea, Madagascar, Sierra Leone, South Africa and Togo).

Although the number of ratifications and signatures of OPCAT in Africa may appear low in comparison to other regions of the world, the situation is quite different in practice. OPCAT ratification processes are well advanced in several African countries, including **Burkina Faso, Ghana, South Africa and Togo**.

Likewise, proposals for NPMs are currently being discussed in **Benin and Liberia**.¹

In addition, possible options for NPMs are being discussed in seminars, conferences and working meetings in a large number of African countries. The Subcommittee on Prevention of Torture (SPT) recommends as follows:

*"The NPM should be developed by a public, inclusive and transparent process of establishment, including civil society and other actors involved in the prevention of torture; where an existing body is considered for designation as the NPM, the matter should be open for debate, involving civil society."*²

Many African States have an active civil society and established National Human Rights Institutions (NHRIs) that are involved in campaigns to promote the ratification and implementation of the OPCAT. Inter-institutional committees gathering government representatives, NHRIs and civil society organisations have been formed in **Benin, Ghana, Togo and South Africa**, for example. These committees or working groups draw up strategies for the ratification of the OPCAT in their respective countries, organise seminars and conferences on the OPCAT and draft NPM proposals. In addition, several civil society organisations have formed a coalition in **Senegal**, and have played an important role in advocating the ratification and implementation of the OPCAT. The coalition mobilised forces and reached the adoption of a law setting up a new specialised institution as NPM.

¹ For further information, see APT, OPCAT Country Status in Africa, Geneva, April 2010, available on: www.apr.ch

² UN Doc. CAT/C/40/2, 14 May 2008, § 28 (b)

The OPCAT stipulates precise requirements concerning the composition and independence of NPMs, as well as the powers and guarantees they enjoy. However, the international treaty gives no indication as to the organisational structure of NPMs. State Parties can therefore create one or several bodies, designate one or several existing bodies or combine the aforementioned options. There is thus no "model" solution: each State is called upon to designate the mechanism most appropriate to its domestic context.

Two trends regarding NPM are currently emerging in Africa, which are similar to other regions of the world:

- a) the creation of a new body specialising in the prevention of torture and other forms of ill-treatment,
- b) the designation of an existing NHRI as NPM.

Senegal and **Nigeria** have opted to designate new mechanisms: a law creating a National Observer of Places of Deprivation of Liberty was adopted in Senegal in February 2009, and a National Committee on Torture was established in September 2009 in Nigeria. The creation of a new preventive body (a National Observatory for Prevention of Torture) is currently being examined in **Benin**. In addition, **Mali** and **Mauritius** have designated their National Human Rights Commissions as NPMs, in October 2007 and 2006 respectively. **Ghana** is also exploring this option, and discussions are under way in **South Africa** to assess the possible involvement of the National Human Rights Commission in the NPM mandate.

2. Interactions between NPMs and other preventive actors in Africa

Cooperation between different actors in view of the effective prevention of torture and other forms of ill-treatment is a central issue for the OPCAT. Article 11(c) of the OPCAT states that the SPT "*cooperates with the competent mechanisms of the United Nations, together with international, regional and national organisations or bodies which work for the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment*". This need for cooperation with other actors is also true for NPMs. And so for the most effective implementation of OPCAT at a national level, it is vital for NPMs to set up dynamic cooperation with the other actors involved with the issue of prevention, including by creating hubs of interaction and synergy. This interaction operates at an international, regional and national level.

a) Interaction with international actors

- The SPT

At an international level, the first entity with which NPMs naturally need to develop a cooperation is the SPT. Article 11(b)³ of the OPCAT states that the SPT is to maintain direct

³ Article 11 (b) of OPCAT states that: "*The Sub-Committee on prevention: (...) As concerns the national preventive mechanisms:*

- a) *Offers advice and assistance to State Parties, if need be, in setting up said mechanisms;*
- b) *Maintains direct contact with said mechanisms, which is confidential if appropriate, and offers them training and technical assistance in view of strengthening their capacities;*

relations with NPMs, to which it provides technical assistance in view of strengthening their capacities and assessing requirements and the means needed to boost protection against torture and other forms of ill-treatment for persons deprived of their liberty. This disposition is supported by the corresponding obligation of States Parties to encourage and facilitate contacts between the SPT and the NPMs (Articles 12(c) and 20 (f) of the OPCAT). The OPCAT establishes a relationship of direct cooperation between the OPCAT preventive bodies.

Since its establishment four years ago, the SPT has already visited two African countries (Mauritius and Benin), and is preparing to visit Liberia in the near future. A review of this cooperation required by the OPCAT is therefore needed, and certain questions need to be asked in order to analyse and evaluate the state of this interaction. It is also important to put forward concrete measures and initiatives for energising this relationship, to ensure better protection against torture and other forms of ill-treatment for persons deprived of liberty.

- Other international actors

It will be particularly useful for NPMs to establish relations of cooperation with other international actors, because they can then share information and practical experience. These international actors include the United Nations Special Rapporteur on Torture, and the United Nations Working Group on Arbitrary Detention, which are also proactive mechanisms whose visits in the field contribute to prevention. In Africa, another international actor is present and concerned by the issue of implementation of the OPCAT: the International Criminal Tribunal for Rwanda (ICTR). The ICTR has signed agreements with two States Parties to the OPCAT (Benin and Mali) to detain persons convicted by the ICTR. It would be interesting to know if the NPMs of these countries will also have the ability to visit the places where persons convicted by the ICTR are detained. In which case, a relationship between the relevant NPMs and the ICTR should be established. Other forms of collaboration could be further explored, such as technical assistance.

b) Interaction with regional actors

- The CPTA and other special mechanisms of the African Commission

As part of its mission for the promotion and protection of human rights in Africa, the African Commission on Human and People's Rights has established specialised mechanisms in charge of ensuring the promotion and protection of human rights for certain groups of people, or in relation to specific themes. As concerns the prevention of torture, the Commission adopted in October 2002 a number of measures and guidelines for the prohibition and prevention of torture in Africa, also known as the Robben Island Guidelines (RIG)⁴. It also set up a monitoring committee, one of whose missions is "*to promote and facilitate the implementation of the RIG within the Member States*" of the African Union. In

-
- c) *Offers them advice and assistance to assess the requirements and means needed to boost protection against torture and other cruel, inhuman or degrading treatment or punishment for persons deprived of liberty;*
 - d) *Formulates recommendations and observations for State Parties in view of strengthening the capacities and mandate of national mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment."*

⁴ For more information, please see: <http://www.apt.ch/content/view/144/156/lang.fr/>

November 2009, the Commission adopted a resolution changing the denomination of the RIG Committee to "the Committee for the Prevention of Torture in Africa" (CPTA)⁵ in order to give it fresh impetus and put the emphasis on the prevention of torture in Africa.

The CPTA has considerable potential for developing the prevention of torture in Africa. Its interaction with the international, regional and national actors working in the field of prevention is essential for furthering the prevention of torture and other forms of ill-treatment on the continent. To this end, an active and strategic cooperation between the CPTA and the NPMs is indispensable. This kind of cooperation will also be important between NPMs and the other mechanisms of the African Commission, including the Special Rapporteur on Prisons and Conditions of Detention in Africa. In addition, the CPTA Chairperson is also the mandate-holder of the Rapporteurship on Prisons and Conditions of Detention in Africa. This represents a unique opportunity to foster synergies between the two bodies. The Dakar Conference will examine the challenges and opportunities of an interaction of this kind, identify possible courses of action, and put forward recommendations and concrete initiatives to ensure the effectiveness and efficiency of such cooperation.

- The Network of African National Human Rights Institutions⁶

The Network of African National Human Rights Institutions (NANHRI) is also a major actor in Africa. Its experience could inspire the NPMs emerging in Africa to envisage an African network of NPMs. In addition, the National Human Rights Institutions already play an important role at the national level in promoting the ratification of the OPCAT. They also contribute to the development of thinking on NPM issues and participate in the various consultations regarding possible NPM options at the domestic level. This is the case, for example, in **Ghana**, **South Africa** and **Togo**. Likewise, as indicated earlier, the National Human Rights Commissions of **Mali** and **Mauritius** have been designated as NPMs. These two institutions are also part of the Network. In terms of interaction with the NANHRI, certain questions could be raised and discussed during the Conference. For example, would it be appropriate or possible for NPMs to join the NANHRI? Since NPMs are mechanisms with a specific mandate, in contrast to National Human Rights Commissions, which have a wider mandate, would it be more effective for NPMs to form their own network?

c) Interaction with national actors

The NPMs will need to interact with a series of actors at a national level, including the governmental authorities, those in charge of places of detention, and civil society. According to Article 19 of the OPCAT, NPMs should establish ideally a constructive dialogue with the governmental authorities and those in charge of places of detention. This dialogue will enable them to discuss issues and solutions, strengthen the protection of persons deprived of their liberty and help to improve detention conditions by formulating appropriate recommendations and proposals.

⁵ For further information, please see: <http://www.apr.ch/content/view/309/97/lang.fr/>

⁶ For further information, please see: http://www.nanhri.org/index.php?option=com_frontpage&Itemid=1

As regards the cooperation of NPMs with civil society organisations, the APT has published a position paper entitled "*Civil society and national preventive mechanisms*", which analyses civil society's role in the process for designating NPMs and in their actual operation. The question of the cooperative relationship between civil society organisations and NPMs merits more attentive examination.

Key questions for discussion:

Through discussions, experience-sharing and appropriate analyses, the working group on interactions between preventive actors will draw up a review, from both the normative point of view (relevant texts) and the practical angle, on the interaction of NPMs and other preventive actors. Recommendations and proposals will be formulated for better cooperation between the NPMs and these different actors, aimed at even more effective prevention of torture in Africa.

Interaction between the NPMs and	Review: normative point of view and the practical aspect	Recommendations/ proposals
SPT		
CPTA		
Other ACHPR mechanisms		
NANHRI and other NHRIs		
Civil society organisations		
Special Rapporteur on torture		
Work group on arbitrary detentions		
ICTR		
NPMs of other regions		
Any other relevant player not listed above		

3. The national preventive mechanisms in action

The SPT considers that the effective establishment of NPMs should be perceived as an ongoing process. The title of its guidelines (Preliminary guidelines for the on-going development of NPMs) is highly evocative. NPMs usually need to address a number of challenges, generally of an operational kind, to be effective. The APT has identified five operational aspects connected with the NPM's preventive work and which can affect its functioning: the NPM's working methods, its outputs, the resources dedicated to the NPM, its internal organisation and relations between the NPM and external actors. These elements are all interrelated, and the issue of independence intersects all the aspects of the NPM functioning⁷:

⁷ The APT has developed a holistic analysis framework which factors in the five operational elements of NPMs. The initial version of this analysis framework was developed jointly by the APT and TC-Team Consult, a Switzerland- and Germany-based company specialising in institutional development. This tool was subsequently developed during a seminar of experts organised in Geneva during March 2009.

- NPM working methods
- Outputs
- Resources
- Internal organisation
- Relations with external actors

Taking into consideration these operational elements enables NPMs to assess their work, identify the operational aspects that are problematic, and find practical solutions to improve their functioning. Likewise, they can assist the national actors in their discussions on the designation of new and/or existing mechanisms by providing them with a framework of analysis on the aspects to be considered when the NPM is designated and set up.⁸

- **NPM working methods**

The principal mandate of NPMs is to prevent torture and other forms of ill-treatment at a national level (Articles 3 and 17 of the OPCAT). The working methods of NPMs should reflect the fact that the broad preventive approach adopted by NPMs goes far beyond visits to places of detention. NPMs' methodology for monitoring places of detention should take this particular approach into account. For example, NPMs must be able to have private interviews with the persons of their choice, and have access to detention files and registers. However, while visits to places of detention enable NPM to have access to first-hand information, they only represent the first step of a holistic preventive strategy. NPMs should look beyond the facts found in the place of detention itself in order to identify possible root-causes for problems. A problem detected within a place of detention during a visit may be the result of external factors and it is thus essential for the NPM to analyse the legal framework, the public policies and the relevant institutions and actors, as well as the way the place of detention is managed and administered.

- **Outputs**

NPMs produce tangible results during the exercise of their mandate. These immediate results are: regular visits to all places where people are or could be deprived of their liberty; NPMs' reports on visits and annual reports, and their observations and recommendations regarding the relevant legislations (Articles 1, 4 and 19 of the OPCAT).

Thus the adoption of a programme of visits to places of detention, the type of visits reports drafted by NPMs, and the publication of NPMs' annual reports are all elements providing an indication of the NPMs' outputs, and thus of their effectiveness.

- **Resources**

The number and frequency of visits to places of detention and the production of visits reports will depend on the resources available. Despite the OPCAT's provisions obliging State Parties to provide the resources required (Article 18.3 of the OPCAT), these resources are rarely sufficient to implement the ideal preventive programme. The term "resources" means financial, human and logistical means, and the autonomy to decide on the use made

⁸ See APT-IIHR, *Manual on the Optional Protocol to the Convention against Torture*, Geneva 2010, chapter 5.

of them. However, resources, like NPMs, are intended to increase as the NPM gradually evolves.

- **Internal organisation**

An NPM's internal organisation has a strong impact on its ability to effectively assume its preventive mandate. Whatever the organisational form chosen, it is essential for NPMs to adopt an internal structure that is clear and transparent. The adoption of internal policies and the clarification of a clear internal structure; an appropriate division of tasks; the definition of roles, responsibilities and decision-making processes; internal rules and administrative and financial procedures should enable NPMs to function more effectively. Some of these factors are more appropriate to some types of NPM than others.

- **Relations with external actors**

NPMs do not work in isolation, because they have to interact closely with a large number of different actors. These include the authorities, the other stakeholders, civil society, National Human Rights Institutions (when they are not designated as NPMs), the media, the SPT, other international and regional human rights mechanisms, and other NPMs.

- **Impact**

If NPMs have sufficient resources, a clear internal structure and efficient working methods, they will be able to implement a holistic preventive strategy and establish cooperative relationships with the authorities and other actors. In a situation of this kind, the work of NPMs can contribute to positive change, reduce the risk of torture and other forms of ill-treatment, improve guarantees and detention conditions, and ensure better protection for persons deprived of their liberty.

Key issues for discussions:

- What are the operational aspects that raise the most challenges for NPMs in Africa? And for other NPMs?
- What practical solutions can be envisaged to overcome these problems?
- What type of assistance can be provided to NPMs to help them function more effectively? Which actors could assist NPMs in their operational phase?

APT, Geneva, 19.04.2010

Annex 2 Status of OPCAT ratifications in Africa



Status of ratifications, signatures and NPM designation in Africa Optional Protocol to the UN Convention against Torture, State at 1st April 2011

10 States Parties and 4 NPMs designated

State	Date of ratification	NPM designated	Useful information
Benin	20 September 2006		
Burkina Faso	7 July 2010		
Democratic Republic of Congo	23 September 2010		
Gabon	22 September 2010		
Liberia	22 September 2004		
Mali	12 May 2005	National Human Rights Commission	Designated in 2006
Mauritius	21 June 2005	National Human Rights Commission	Designated in October 2007 (SPT visit)
Nigeria	27 July 2009	National Committee on Torture (new)	Established in September 2009
Senegal	18 October 2006	National Observer of the Places of Deprivation of Liberty	New body designated in February 2009. Pending establishment.
Togo	20 July 2010		

7 States signatories

State	Date of signature
Cameroon	15 December 2009
Ghana	06 November 2006
Guinea	16 September 2005
Madagascar	24 September 2003
Sierra Leone	26 September 2003
South Africa	20 September 2006
Zambia	27 September 2010

Annex 3	Programme
----------------	------------------

Tuesday 27 April 2010

8:30-9:00	Registration of participants
9:00-10:00	<p><u>Session I:</u> Opening ceremony</p> <p>Conference Coordinator: Jean-Baptiste Niyizurugero, Africa Programme Officer, APT</p> <ul style="list-style-type: none"> ▪ <i>Welcome remarks: Diéne Ndiaye, Vice-President, AI Senegal</i> ▪ <i>Speech: Mark Thomson, Secretary General, APT</i> ▪ <i>Speech: Mahamane Cissé-Gouro, Regional OHCHR Representative for West Africa and nominated to represent Navi Pillay, HCHR, at the seminar</i> ▪ <i>Speech: Dupe Atoki, Chairperson of the CPTA, Commissioner of the African Commission on Human and Peoples' Rights</i> ▪ <i>Opening speech: Oumar Diouf, Ministry of Justice, Senegal</i>
10:00-10:30	Tea break and departure of guests
10:30-12:30	<p><u>Session II:</u> How can the Optional Protocol to the UN Convention against Torture (OPCAT) make a difference in torture prevention?</p> <p>Chair: Mark Thomson, Secretary General, APT</p> <ol style="list-style-type: none"> 1. Monitoring places of detention, a means to prevent torture and other forms of ill-treatment <ul style="list-style-type: none"> ▪ <i>Concepts and usefulness of preventive monitoring:</i> Edouard Delaplace, ICRC Geneva ▪ <i>Preventive monitoring in Africa:</i> Hannah Forster*, Member of the CPTA and Executive Director of the ACDHRS 2. The OPCAT: A system of prevention of torture and ill-treatment <ul style="list-style-type: none"> ▪ <i>SPT in action: elements of preventive mandate and challenges:</i> Zdeněk Hájek, SPT member ▪ <i>Essential criteria and requirements for effective NPMs:</i> Suzanne Soukoude, Magistrate, Vice-Chair of the OPCAT Working Group, Togo 3. Interactive discussions <p style="text-align: right;">(*excused, Ms Foster could not be present at the conference)</p>
12:30-14:00	Lunch break (Buffet at Novotel restaurant)
14:00-15:30	<p><u>Session III:</u> Implementing the OPCAT: Need for dialogue and consultations on OPCAT and NPM designation</p> <p>Chair: Mahamane Cissé-Gouro, Regional Representative, OHCHR</p>

	<ol style="list-style-type: none"> 1. The need for a broad dialogue on OPCAT ratification and implementation: Zdeněk Hájek, SPT member 2. OPCAT Consultations and best practices from Africa <ul style="list-style-type: none"> ▪ <i>A successful campaign for OPCAT ratification and implementation in Senegal</i>: Seydi Gassama, Amnesty International Senegal ▪ <i>Establishment of OPCAT working Group in Togo and perspectives for OPCAT ratification</i>: Denis Minekpor Kokou, Ministry of Human Rights ▪ <i>Section 5 Committee of the South African Human Rights Commission (SAHRC) and way forward towards OPCAT ratification and implementation</i>: Danny Titus, Commissioner SAHRC, South Africa 3. Interactive discussions
15:30-16:00	Tea break
16:00-17:30	<p>Session IV: Implementing the OPCAT: Designating effective NPMs, what options?</p> <p>Chair: Mandiaye Niang, Senior Legal Adviser, International Criminal Tribunal for Rwanda</p> <ol style="list-style-type: none"> 1. <i>Trends and options of NPMs in Africa and elsewhere</i>: Audrey Olivier, OPCAT Coordinator, APT 2. <i>Designating new specialised bodies as NPM, experiences from Africa and elsewhere</i> <ul style="list-style-type: none"> ▪ <i>The establishment of the General Inspector of all Places of Deprivation of Liberty in France</i>: Jean-Marie Delarue, General Inspector (French NPM) ▪ <i>Proposal towards the establishment of a National Observatory for Prevention of Torture in Benin</i>: Marie-Gisèle Zinkpe, Magistrate, Ministry of Justice, Legislation and Human Rights, and Coordinator of OPCAT Working Group, Benin ▪ <i>The National Observer of Places of Deprivation of Liberty in Senegal</i>: Oumar Diouf, Magistrate, Deputy-Director of Criminal Affairs and Pardons, Ministry of Justice 3. Interactive discussions

Wednesday 28 April 2010

8:30-8:45	<p>Summary of day 1 Patrick Lessene, APT Delegate to the African Commission</p>
8:45-9:45	<p>Session V: Implementing the OPCAT: Designating effective NPMs, what options? (continued)</p> <p>Chair: El Hadji Malick Sow, Chairperson of the UN Working Group on</p>

	<p>Arbitrary Detention</p> <ol style="list-style-type: none"> 1. Designating national human rights institutions as NPM <ul style="list-style-type: none"> ▪ <i>The role of the National Human Rights Commission (NHRCM) as NPM in the Maldives:</i> Mohamed Zahid, Vice-President of NHRCM, Maldives ▪ <i>The potential of the Commission on Human Rights and Administrative Justice as NPM in Ghana:</i> Anna Bossman, Commissioner of CHRAJ, Ghana 2. Interactive discussions
9:45-10:15	<p>Session VI: Towards effective OPCAT implementation in Africa: Introduction to working groups</p> <p>General introduction from the Conference Coordinator: Jean-Baptiste Niyizurugero, Africa Programme Officer, APT</p> <ol style="list-style-type: none"> a) Working Group 1: Interactions between torture prevention actors in the context of OPCAT implementation in Africa <ul style="list-style-type: none"> ▪ <i>Need for interaction and cooperation at national, regional and global levels:</i> Jean-Baptiste Niyizurugero, Africa Programme Officer, APT b) Working Group 2: NPMs in action <ul style="list-style-type: none"> ▪ <i>Key elements to analyse the functioning of NPMs:</i> Audrey Olivier, OPCAT Coordinator, APT
10:15-10:45	Tea break
10:45-12:30	<p>Session VII: Towards effective OPCAT implementation in Africa: Discussions in working groups</p> <p>Working Group 1: Interactions between torture prevention actors</p> <p>Chair: Jean-Baptiste Niyizurugero, Africa Programme Officer, APT Rapporteur: Caroline Ouaffo Wafang, Associate Expert in Human Rights, OHCHR, Togo</p> <p>Brief introductions by resource persons:</p> <ol style="list-style-type: none"> a. ACHPR (Feyi Ogunade, Senior Legal Officer, ACHPR) b. NANHRI (Abderrazak Rouwane, Morocco National Human Rights Council) c. ICTR (Mandiaye Niang, ICTR) d. NPMs from other regions (Jean-Marie Delarue, France) e. CSOs (Jarwlee Tweh Geegbe, Executive Director, Rescue Alternative, Liberia) f. ICRC (Edouard Delaplace, ICRC Geneva) <p>Working Group 2: NPMs in action, how NPMs are working/will work?</p> <p>Chair: Mark Thomson, Secretary General, APT</p>

	<p>Rapporteur: Dr. Uju Agomoh, PRAWA, Nigeria</p> <p>Brief introductions by resource persons:</p> <ol style="list-style-type: none"> a. SPT (Zdeněk Hájek, SPT) b. NPMs from other regions (Mohamed Zahid, Vice-President of NHRC, Maldives) c. NPMs from Africa (Kadidia Sangaré, Chairperson of NHRC, Mali) d. CPTA (Commissioner Musa Bitaye, ACHPR) e. OPCAT Working Groups (Lukas Muntingh, Member of the Section 5 Committee of SAHRC) f. APT (Audrey Olivier, OPCAT Coordinator, APT)
12:30-14:00	Lunch break (Buffet at Novotel restaurant)
14:00-15:00	<p><u>Session VIII:</u> Towards effective OPCAT implementation in Africa: Reporting back from working groups</p> <p>Chair: Anna Bossman, Deputy Commissioner CHRAJ, Ghana</p> <ol style="list-style-type: none"> 1. Reporting back from Working Groups <ul style="list-style-type: none"> ▪ Working Group 1: Caroline Ouaffo Wafang, OHCHR, Togo ▪ Working Group 2: Dr. Uju Agomoh, PRAWA, Nigeria 2. Interactive discussions
15:00-15:30	Tea break
15:30-16:00	<p><u>Session IX:</u> Recommendations, follow-up strategies and ways forward</p> <p>Chair: Jean-Baptiste Niyizurugero, Africa Programme Officer, APT</p> <p>Conference Rapporteurs:</p> <ul style="list-style-type: none"> - Amanda Dissel, APT Delegate in South Africa (English) - Patrick Lessene, APT Delegate to the ACHPR (French) <ol style="list-style-type: none"> 1. Formulation and adoption of recommendations (road map) 2. Possible follow-up and ways forward
16:00-16:30	<p><u>Session X:</u> Closing</p> <p>Chair: Seydi Gassama, Executive Director, AI - Senegal</p> <ul style="list-style-type: none"> ▪ AI Senegal ▪ APT ▪ ACHPR ▪ OHCHR ▪ Ministry of Justice, Senegal

Annex 4	List of participants
----------------	-----------------------------

<i>Name</i>	<i>Position & Institution</i>
-------------	-----------------------------------

South Africa

Danny TITUS	Commissioner at the South-African Commission for Human Rights
Lukas MUNTINGH	Coordinator of the Civil Society Prison Reform Initiative project and Member of Section 5 Committee

Benin

Marie-Gisèle ZINKPE	Magistrate at the Ministry of Justice, Legislation and Human Rights, and Coordinator of the OPCAT working group
Eric MONTCHO-AGBASSA	Member of the OPCAT working group and lecturer/ researcher at Abomey-Calavi University, Law and Political Science Faculty

Burkina Faso

André DEMBELE	Secretary General of the Ministry for the Promotion of Human Rights
Thierry Donald Armel YAMEOGO	<i>Attaché</i> for Human Rights at the Secretariat General of the National Human Rights Commission
Lucienne Ariane ZOMA	President of ACAT Burkina Faso

Ghana

Peace Gifty Sakyibea OFEI	Assistant to the Public Prosecutor, Department of the Public Prosecutor, Ministry of Justice
Anna BOSSMAN	Deputy-Commissioner of the Commission for Human Rights and the Administration of Justice
Caroline BOATENG	Journalist at the Daily Graphic

Mauritius

Binaye Kumar GOURY	Deputy-Commissioner for Prisons, Mauritius Prison Service
Martine HENNEQUIN	Psychologist and therapy coordinator, Association <i>Kinouété</i>

Liberia

William Z. TOGBA	Director of the Human Rights Division, Ministry of Justice
Jarwlee TWEH GEEGBE	Executive Director of Rescue Alternatives Liberia

Mali

Boubacar Sidiki SAMAKÉ	Technical Councillor at the Ministry of Justice
Kadidia SANGARÉ	President of the National Human Rights Commission

Nigeria

Ezonebi Blessing AZORBO	Chief State Counsel, Department of citizen's Rights, Federal Ministry of Justice
Dr. Samson Sani AMEH	(S.A.N) President of the National anti-Torture Committee
Dr. Uju AGOMOH	Executive Director of Prisoners Rehabilitation and Welfare Action (PRAWA)

Senegal

Abdoulaye BABOU	President of the Law Commission at the National Assembly
Aissata COULIBALY	Member of the Law Commission, National Assembly
Oumar DIALLO	Project Officer, RADDHO

Samba DIOP	Senator, President of the Law Commission of the Senate
Oumar DIOUF	Magistrate, Deputy-Director for criminal Affairs and Pardons, Ministry of Justice
Abdoul Aziz LOUM	Ministry of Foreign Affairs
Augustine MENDY	President of ACAT Senegal
Assane Dioma NDIAYE	President ONDH
Kabyr NDIAYE	Responsible for the Justice Programme of RADI
Awa NDOUR	Permanent Vice-Secretary, Senegalese Committee for Human Rights
Gaspard ONOKOKO	President, <i>Gra-Redep</i>
Souleymane SECK	Responsible for Judicial Affairs
Mamadou THIANDOUM	Ministry of the Interior

Togo

Denis MINEKPOR KOKOU	Director for legislation and protection at the Ministry for Human Rights and Member of the OPCAT working group
Ahoro Atchindé AMAKOUE	Commissioner at the National Commission for Human Rights
Suzanne SOUKOUDE	Magistrate, Vice-President of the OPCAT working group
Caroline OUAFFO WAFANG	Human Rights Expert, Office of the UN High Commissioner for Human Rights in Togo

Resource persons and other participants

Mahamane CISSE-GOURO	Regional representative of the UN High Commissioner for Human Rights for West Africa in Dakar
Patrice VAHARD	Senior Human Rights Advisor, Chief of the Human Rights division, UN Office for West Africa (UNOWA), Senegal
Zdeněk HÁJEK	Member of the UN Sub-Committee for the Prevention of Torture, Czech Republic
Nicole RECKINGER	First Councillor, Liaison Office of the EU in Geneva
Hervé RIVIERE	<i>Attaché</i> for Cooperation, responsible for the institutional sector, French Embassy in Dakar
Maria BERENGUER	Representative of the Spanish Embassy in Dakar
Patrick VAN WEERELT	Head of Cabinet (democratic governance), UNDP regional Centre Dakar
Isabelle TSCHAN	Policy Specialist, Human Rights and Access to Justice, UNDP regional Centre in Dakar
Abderrazak ROUWANE	Head of Department for cooperation and external relations at the Consultative Council for Human Rights and representative of the President of the Network of African National Institutions for Human Rights, Morocco
Jean-Marie DELARUE	<i>Contrôleur général des lieux de privation de liberté</i> , France
Mohamed ZAHID	Vice-President of the Human Rights Commission of the Maldives (NPM of the Maldives)
Mandiaye NIANG	Special Assistant to the Registrar, Senior Legal Advisor, International Penal Tribunal for Rwanda, Tanzania
Edouard DELAPLACE	Councillor at the Unit for people deprived of liberty, Protection Division, International Committee of the Red Cross, Geneva
Bernard J. Ngamo Kameni	Head of the Coordination Unit for the fight against human trafficking and child protection, Department of Human Integration, Peace, Security and Stability, Secretariat General, Economic Community of Central African States, Gabon

Committee for the Prevention of Torture in Africa (CPTA)

Dupe ATOKI	President of the CPTA, Special Rapporteur on Prisons and detention conditions in Africa, Commissioner at the African Commission for Human and Peoples' Rights, Nigeria
Jean-Baptiste NIYIZURUGERO	Vice-President of the CPTA and Africa Programme Officer for APT
Musa BITAYE	CPTA member and Commissioner at the African Commission for Human and Peoples' Rights, Gambia
Hannah FORSTER	CPTA member and Executive Director of the African research centre on democracy and human rights, Gambia
El Hadji Malick SOW	CPTA member and President-Rapporteur of the working group on arbitrary detention of the UN Human Rights Council, Senegal
Feyi OGUNADE	Legal Advisor at the African Commission for Human and Peoples' Rights, Gambia

Amnesty International Senegal

Diène Ndiaye	Vice-President of Amnesty International Senegal
Seydi GASSAMA	Director of Amnesty International Senegal
El hadj Abdoulaye S	Member, Amnesty International Senegal
Papa Samba SENE	Member, Amnesty International Senegal

Association for the Prevention of Torture (APT)

Mark THOMSON	Secretary General
Audrey OLIVIER	OPCAT Coordinator
Jean-Baptiste NIYIZURUGERO	Africa Programme Officer
Claudia D'ESPOSITO	Advisor to the Africa Programme
Ghislain Patrick LESSENE	APT delegate at the African Commission
Amanda DISSEL	APT delegate in South Africa

The APT would like to thank the following donors who made its activities in Senegal and the printing of this report possible:

**With the support of
THE BELGIAN
DEVELOPMENT COOPERATION .be**



British Foreign and
Commonwealth Office

The Prevention of Torture in Africa

In Africa, in recent years, the Association for the Prevention of Torture (APT) has partnered with various stakeholders to develop regional solutions based on international standards to prevent torture and other cruel, inhuman or degrading treatment or punishment. It is in this spirit of stimulation and mobilisation of all available energies for a better prevention of torture, that it organised the Regional Conference on the Prevention of Torture in Dakar, Senegal, on 27-28 April 2010.

This publication on the proceedings of the Conference aims at sharing the wealth of work and discussions of the event, which provided an opportunity for rewarding and fruitful exchanges of experience and best practice among participants.

It is a compilation of the various contributions made by the experts to the Conference on the range of topics discussed, including the added value of OPCAT in torture prevention, the need for broad dialogue on OPCAT ratification and implementation, the options for designation of national preventive mechanisms (NPM), the cooperation and interaction between NPMs and national, regional and international actors as well as the need for the effective functioning of an NPM. The report also includes the Dakar Plan of Action adopted on that occasion.

The APT hopes that this publication will prove useful and may serve as a reference or inspiration for relevant actors for the prevention of torture and, in particular, the effective implementation of OPCAT in Africa and elsewhere.



African Commission for Human and Peoples Rights
No 31 Bijilo Annex Layout,
Kombo North District, Western
Region, P.O.Box 673
Banjul, The Gambia
Tel: (+220) 441 0505; -0506
Fax: (+220) 441 0504
au-banjul@africa-union.org
www.achpr.org



Association for the Prevention of Torture (APT)
Route de Ferney 10
P.O. Box 137
CH - 1211 Geneva 19,
Switzerland
Tel: (+41) 22 919 21 70
Fax: (+41) 22 919 21 80
apt@apt.ch
www.apt.ch



Amnesty International Senegal
303/GRD Sacré-cœur II Résidence
Arame SIGA Dakar Colobane BP
35269
Senegal
Tel: (+221) 33 825 47 38
Fax: (+221) 33 825 47 30
asenegal@sections.amnesty.org
www.amnesty.sn