

NPMS' EFFECTIVENESS: HOW TO MAKE IT WORK
*Anecdotal Lessons from the Human Rights Monitoring Role of
Ghana's Commission on Human Rights and Administrative Justice*

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By

Lauretta Vivian Lamptey
**Commissioner for the Commission on Human Rights and Administrative
Justice
Ghana**

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Introduction

Dear Friends,

I am very honoured to be associated with this Forum, an impressive gathering of important stakeholders in the global efforts to combat torture. Permit me to commend the Association for the Prevention of Torture (APT) for their excellent decision to organize a forum which will represent a complete move, away from the rhetoric, to a “[transformation] of pledges into more substantive actions to better prevent torture and other forms of ill-treatment.”

For this session on the effectiveness of National Preventive Mechanisms (NPMs), I would like to first share a few anecdotal lessons from the human rights monitoring role of the Commission on Human Rights and Administrative Justice (CHRAJ) in Ghana, and to examine these within the context of the 6 broad issues tabled for discussion this afternoon namely:

1. What are the elements of NPM effectiveness?
2. What are the obstacle to ensuring NPM effectiveness and the options to overcoming them?
3. Would an accreditation process for NPMs have an impact on their effectiveness?
4. What is the SPT concrete role in relation to NPM’s effectiveness?
5. What are the obligations of the state and NPMs in relation to their effectiveness?
6. With whom should NPMs engage (and how) to be more effective?

Firstly let me provide a brief overview of the CHRAJ and its human rights monitoring role for detention centres. The CHRAJ was established in July 1993 by Ghana’s 1992 Constitution and an Act of Ghana’s Parliament¹ to complement the courts in the enforcement of human rights in Ghana. Constitutionally, the CHRAJ has a triple mandate – it serves as Ghana’s National Human Rights Institution, Ghana Ombudsman, as well as one of Ghana’s main Anti-Corruption Agencies. This is reflected in its mission, which is to promote, protect and enforce fundamental rights and freedoms, administrative justice and integrity in Ghanaian society.

Although its broad constitutional and statutory mandate does not include an express provision to conduct preventive visits to and inspection of detention centres, the CHRAJ proactively initiated monitoring visits to detention centres through an purposive interpretation of its human rights mandate to include a duty to ensure that the fundamental human rights of prisoners in Ghana are respected, protected and promoted. After all, all prisoners retain all of their rights which are not expressly or by necessary implication taken away by the fact of their incarceration. The CHRAJ, accordingly, instituted annual monitoring of prisons and police cells on account of the following reasons:

1. Incarcerated persons are vulnerable and usually at risk of being subjected to torture, cruel, inhuman and degrading treatment and other human rights violations.

¹ Commission on Human Rights and Administrative Justice Act, 1993 (Act 456)

2. In the process of incarceration the detaining authorities exercise direct and enormous power over the incarcerated. This power shapes the conditions under which prisoners are held. These conditions not only determine the quality of prisoners' lives but may also literally translate into matters of life or death for them. Instituting a monitoring system to guard against abuse of power by detaining officers and to ensure that prisons conditions are up to stand is therefore of prime importance both for prisoners and for society as a whole.
3. Prisons house a uniquely and largely powerless population of the society who depend almost entirely on detaining authorities and others for the protection of their rights.
4. The prison environment is a closed one and anyone including detaining authorities and inmates can take advantage of this to abuse the rights of others.

Monitoring activities commenced in 1995. In 2010 for instance, 469 out of the 672 police stations in Ghana were monitored. The CHRAJ also monitored 28 out of 42 prisons and prison camps and 3 senior correctional institutions. The kinds ill-treatment encountered mostly in detention centres in Ghana relates to poor conditions, including overcrowded accommodation and lack of time and activities out of cell, or other shortcomings in the system.

The human rights monitoring activities of the CHRAJ also extend to other organisations such prayers camps, where people, based on their faith are camped for spiritual healing to various diseases and deliverance from supposedly spiritual ailments. Visits to 51 of these camps in 2010 highlighted some serious forms of dehumanising treatment including the chaining of those seeking help from the camps.

Other places under the monitoring watch of the CHRAJ include witches camps. These are settlements, particularly in northern parts of Ghana, where persons (mostly women) accused of witchcraft and sorcery seek refuge from the fury of various communities in that part of Ghana. The CHRAJ visited 4 of such settlements in 2010.

From these, it is quite obvious that although Ghana is yet to ratify the Optional Protocol to the Convention Against Torture (OPCAT), the CHRAJ has served as Ghana's de-facto NPM since 1995. Arguable, it emerges as the most appropriate establishment to be designated an NPM once the OPCAT is ratified, which hopefully, should be within the next few months.

I will now turn to the 6 issues tabled for discussion this afternoon, as highlighted earlier.

What are the Elements of NPM Effectiveness?

There are many elements in the CHRAJ module that are worth replicating to make NPMs effective. I will highlight 6 of these.

a) Independence of NPMs

The experience of the CHRAJ shows that strong operational independence is critical to the effectiveness of any NPM. The Ghanaian Constitution guarantees the independence of the CHRAJ and its Commissioners. The Commissioners are not subject to the direction or control of any person or authority in the performance of their functions.² In this sense, the CHRAJ and its Commissioners enjoys constitutional protection that allows it to confidently exact accountability from the relevant public institutions include the Ghana Prison's Service.

Similar functional autonomy remains critical to the ability of NPMs to actions independent of, or contradictory to government interests. It will also be an important source of public legitimacy and confidence for NPMs in the fight against torture.

b) Security of Tenure of the Members of NPMs

In addition to their operational independence, the Commissioner and her two Deputy Commissioners have very high tenured office, thereby limiting any possible executive interference by the appointing authority through the removal of the Commissioners from office. Under the scheme, neither the Commissioner nor her deputies can be removed from office except for stated misbehaviour or incompetence or on ground of inability to perform the functions of their office arising from infirmity of body or mind.³ There is an extremely stringent procedural mechanism for the removal of the Commissioners.

The CHRAJ experience show that a high security of tenure for the members of NPMs would afford the opportunity afford the opportunity for creative leadership and the development of NPMs into robust and stable institutions, which in turn would lend public credibility to their actions.

c) A Strong Nationwide Presence of NPMs

Visiting, and monitoring the state of human rights in 469 police stations, 28 prisons, 3 senior correctional institutions, 51 prayer camps, and 3 witch camps in 2010 would have been such a herculean task, virtually impossible to execute if the CHRAJ did not have a strong network of offices across Ghana as required by the 1992 Constitution.⁴ Currently, the CHRAJ has a very strong nationwide presence with one regional office in every regional capital in Ghana, 2 sub-regional offices, and 100 district offices. In this sense, the Supreme Court of Ghana has described the CHRAJ as “a particular kind of statutory corporate entity comprising the Commissioner, the two Deputy Commissioners and the staff employed by them to assist them in carrying out the functions of the Commission”.⁵ Elsewhere, this institutional framework of

² Article 225 of the 1992 Constitution and section 6 of Act 456

³ Article 146(1) of the 1992 Constitution

⁴ Articles 220 and 226 of the 1992 Constitution and sections 10 and 20 of the Commission on Human Rights and Administrative Justice Act, 1993 (Act 456)

⁵ **Ampiah Ampofo v. Commission on Human Rights and Administrative Justice** [2005 -2006] SCGLR 227 per Date-Bah JSC at 242

the CHRAJ has been described as, being “characterised by decentralisation and flexibility, contributing to a high level of public trust and legitimacy.”⁶

NPMs would definitely draw much of their public trust and ability to conduct quick, prompt, and comprehensive monitoring of as many detention centres from their nationwide presence, either through a strong network of offices or a strong association with State and non-State actors in the fight against torture and other forms of ill-treatment.

The support of a strong and teeming workforce with diverse but complementing skills and expertise would augment such strong nation-wide presence. In this regard, the professional background of the CHRAJ’s workforce is varied; bearing in mind the usefulness of ensuring staff from different professions – legal, social sciences, policing, and research among many others. Naturally, persons employed from such varying background would bring their expertise to bear on monitoring functions of NPMs and make them more effective.

d) Ability to Build Mutual Confidence

There would naturally be some simmering tension between NPMs and detaining authorities. The CHRAJ’s experience show that very often, the authorities who would interface NPMs may have the thinking that members of NPMs are ignorant interlopers with a special axe to grind, always expecting to find abuse around every corner and failing to understand the context within which detention centres operate. The power to access to all places involving deprivation of liberty, to move freely inside them, to speak in private with persons held there and to have access to any information are necessary tools for NPMs, but considered as very intrusive various detaining authorities.

It is absolutely important for NPMs to overcome these initial misgivings and misconceptions. The key to ensuring this is for NPMs to demonstrate the highest level of neutrality with hidden agenda. Members of NPMs must present themselves as neutral observers with the relevant expertise, experience and knowledge. This will definitely require NPMs to study and a thorough understanding of the legislative and administrative framework within which detention centres operate.

It is also of utmost importance for NPMs to appreciate that identifying problems is not an exercise in laying blame. It should be considered as the necessary first step in the process of finding solutions and encouraging change. NPMs can be important allies for prison personnel who strive, very often against the odds, to run a safe and decent prison. It may emerge that the problems encountered in a prison derive largely from staff shortages or lack of staff training, from budget cuts amidst increasing prisoner population, and from policies that create more paperwork rather than better practice. In such situations, NPMs will come

⁶ Cameron, Geoffrey, Cameron, Geoffrey, “National Human Rights and Government Accountability: A Comparative Study of Ghana and Nigeria”, Thesis submitted in partial fulfillment of the requirement for the Degree of Mater of Philosophy in Politics (Comparative Government), Department of Politics and the International Relations, University of Oxford (April 2008)

in aid of prison personnel by taking such issues with the central administration to effect changes and improve conditions.

e) **Ability to Provide Legal Representation and the Power to Secure the Termination of Human Rights Abuses**

In some instances, there arise the need for NPMs to provide legal representation for victims of human rights abuses in prisons and must, accordingly, have strong constitutional or legislative backing to be able to secure the enforcement of its recommendations and the termination torture and ill-treatment in detention centres. Once again, the CHRAJ experience shows that such legal powers are of utmost importance. While it does not have self-enforcement powers, the CHRAJ has the power to initiate legal proceedings in any court in Ghana to seek for any remedy which may be available from that court and also to enforce its decisions and recommendations in human rights cases.⁷ The CHRAJ occasionally makes use of this constitutional and statutory power to secure the release of prisoners on remand whose warrants for detention have expired and those remand prisoners whose trials unnecessarily delay.

The experience show that an independent NPM with few legal powers to secure compliance with national and international norms humans rights would leave that NPM with few options to pursue its oversight mandate relating to the fight against torture, except by resort to advice and persuasion to negotiate a limited degree of accountability from the government.

In this regard, NPMs must not ignore the important effects that the judicial branch can have directly and indirectly on prison conditions. NPMs must strike appropriate balance between the administrative tools at the disposal and judicial remedies that may be explored to secure effective prisons oversight and consequently curb torture and other forms of ill-treatment in prisons and other detention centres. An NPM which rely solely on recommendations, persuasion and publicity to effect change, will have great difficulties resolving systemic issues in these circumstances.

A case in point is the Justice for All Programme, an initiative by the Judicial Service of Ghana, conducted in collaboration with the Attorney-General Department, aimed at decongesting the country's prisons of large numbers of remand inmates. Under the programme, the courts to, and sit in the prisons to hear and expedite trial for as many remand prisoners as possible. This programme commenced in 2007, after several prisons visits by the CHRAJ highlighted the deplorable state of remand prisoners in Ghana.

Another case in point is the recent decision by the Supreme Court of Ghana to enforce the rights of prisoners to vote.⁸ Enfranchising prisoners will arguably offer prisoners the

⁷ Article 229 of the 1992 Constitution, and sections 7(1)(d)(iii), 9 and 18(3) of the Commission on Human Rights and Administrative Justice Act, 1993 (Act 456)

⁸ *Ahumah-Ocansey v Electoral Commission; Centre for Human Rights and Civil Liberties (CHURCIL) v Attorney-General and Electoral Commission (Consolidated)* [2010] SCGLR 575.

opportunity to directly exact government accountability in improving conditions in the prisons.

f) Confidentially vs. the Use of the Media in Monitoring

When a strong and an independent NPM assumes the leadership role in deliberations on various prisoner rights issues, public opinion would almost certainly surge in the direction of the position of the NPM and government is forced to act on the recommendations that emerge in the course of such deliberations.

On one hand, the knowledge that the discussions on issues identified will remain confidential can have a liberating effect for prison personnel. The confidentiality of the discussions enables everyone to be more frank, without fear that what is said will be reported. It is very rare to have prison official in total denial that there is anything wrong at all.

On the other hand, the CHRAJ experience show that the media can be a key element in creating visibility about the findings of NPMs. In this sense, the CHRAJ has leveraged its legitimacy in the public sphere through media exposure and social mobilisation to generate mass pressure for the enforcement of its recommendations. Sustained media discussion of the CHRAJ reports and findings allows wider cooperation with state and non-state agencies, and has for instance brought the dire state of remand prisoners to fore, leading to significant infrastructural changes, including the closure of the James Town Prison previously one of Ghana's most notorious remand prison, and the construction of a new prison to facilitate prison decongestion.

Quite clearly, there is the need for NPMs to strike a fair balance between the rule on confidentiality and the ability to use the media in creating visibility about the findings of NPMs.

What are the Obstacle to Ensuring NPM Effectiveness and the Options to Overcoming them?

a) Inadequate Funding

As would be typically the case for many African NPMs, the most significant obstacle to the CHRAJ is the lack of funds. The CHRAJ has managed to conduct effective monitoring without the requisite financial support. Thus, it would be appropriate to grant NPMs some degree of financial autonomy rather than subjecting their operation budget entirely to the dictates of the executive.

b) Routine Recommendations

There is the high tendency for the recommendations of NPMs to become mere routine, administrative acts. It is accordingly important for NPMs to follow-up on their recommendations with the relevant authorities to ensure their implementation. Where legal action is necessary to ensure implementation, NPMs must be given the necessary constitutional or statutory backing for enforcement.

c) Occasional lack of co-operation

As indicated, there is the need to strike a fair balance between the rule on confidentiality and the ability to use the media in creating visibility about the findings of NPMs.

Would an Accreditation Process for NPMs have an Impact on their Effectiveness? If so, should it be a Peer Procedure or Administered by an External Agency such the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)?

Accreditation would be most appropriate to keep NPMs working to attain the highest possible ranking. Adoption of peer review with some external input would be useful. Accreditation could be based on internal set of principles, set out and regularly updated by the SPT along similar lines as the Paris Principles and incorporating the norms of OPCAT. Based on these principles, NPMs could then be assessed by peer review.

What is the SPT Concrete Role in Relation to NPM's Effectiveness?

A good balance between internal and external monitoring can prevent human rights breakdowns, detect violations when they occur, and rectify the situation to ensure that they do not happen again. Striking the appropriate balance between internal and external monitoring to ensure that the existing domestic structures conform to the wider norms is not easy. The structure put forward by the OPCAT, with its flexible combination of an international inspectorate, in the form of the SPT, applying international human rights standards, combined with NPMs, has the potential to address this challenge and make NPMs more effective.

With the existence of different prison oversight and regulatory systems across the world, the operation of the SPT could serve as an international central mechanism to influence national strategies through the NPMs to develop optimal national regulatory systems that are sensitive to different national regulatory traditions, while at the same time using its direct powers of inspection strategically to advance human rights standards. The SPT could conduct further studies on the subtle differences between systems that may influence what form of regulation will be most effective and also on the substantive standards to be applied to them.

What are the Obligations of the State and NPMs in Relation to their Effectiveness?

State have the duty to invest in NPMs to ensure that they have at their disposal every resource they require (financial, logistical, and human) for their effectiveness.

With whom should NPMs engage (and how) to be more effective?

a) Build a strong Network with Non-State Actors

Civil Society Organisations form critical component of a strong domestic human rights constituency and can work to complement the efforts of NPMs in fighting torture and entrenching human rights norms at the domestic level.

In Ghana for instance, the fact of CHRAJ's strong presence nationwide is further enhanced through its extensive range of partnerships and contacts with social actors at all levels of society. Significant number human rights initiatives in Ghanaian prisons are undertaken by these social actors. Amnesty International Ghana and the Prisons Fellowship for instance carry out different forms of visits to places of detention. The Centre for Human Rights and Civil Liberties (CHURCIL) and other likeminded NGOs also collaborate with the Judiciary and the Attorney-General's Department to provide legal services for remand prisoners during the Justice for All Programme. The CHURCIL also initiated the public interest law case which led to the declaration by Ghana's Supreme Court that prisoners in Ghana are entitled to vote.

NPMs in this regard may assume an additional role as a central mechanism to maintain effective link all with social actors (in terms of developing appropriate monitoring tools, preparation of reports and formulation of relevant recommendations).

b) Institute Cooperative Dialogue with State Actors

The NPMs must open cooperative dialogues with State actors at all levels - with government ministers, prison policy makers, directors of prison systems, prison managers, and prison staff. In this regard, dialogue torture prevention must be conceived as a long-term on-going enterprise, continuing from one visit to the next, with written reports, responses and reactions, with correspondence and meetings with the authorities and further visits to follow-up on particular issues to facilitate the next steps forward.

The CHRAJ interactions with State actors, particularly, those key to the criminal justice system including the Chief Justice, the Attorney-General, the Inspector-General of Police and the Director-General the Prisons Service have led to different policies on prisoners, such as the Justice for All Programme.

Conclusion

NPMs constitute effective mechanism in the global fight against torture and ill-treatment. I hope I have provoked you enough for some serious discussions on the factors of NPMs effectiveness tabled for discussion this afternoon.

THANK YOU FOR YOUR KIND ATTENTION