



Africa torture prevention Conference

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:

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

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

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

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

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:

- the creation of a new body specialising in the prevention of torture and other forms of ill-treatment,
- 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

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

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

direct 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.

b. 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.

c. 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 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.

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

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

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 Institutions** ⁶

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?

d. 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.

As regards the cooperation of NPMs with civil society organisations, the APT has published a position paper entitled "*Civil society and national preventive mechanisms*"⁷, 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.

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

⁷ Refer to the APT site: www.apr.ch and http://www.apr.ch/component?option=com_docman/task_cat_view/gid.51/Itemid.59/lang.fr/

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 aspects⁸ 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 functioning.

Taking into consideration these operational elements enables NPMs to assess their work, identify the operational aspects that are problematic, and find practical solutions to

⁸ 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-Teamconsult, 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.

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.⁹

- **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 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

⁹ See APT – IIHR, Manual on the Optional Protocol to the Convention against Torture, Geneva 2010, Chapter 5 (document currently being edited).

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