



# THE GLOBAL FORUM ON THE OPCAT

## Preventing Torture, Upholding Dignity: From Pledges to Actions

### Outcome Report

**apt**

association pour  
la prévention de la torture  
association for the prevention of torture  
asociación para la prevención de la tortura



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The Association for the Prevention of Torture (APT) is an independent non-governmental organization based in Geneva, working globally to prevent torture and other ill-treatment.

The APT was founded in 1977 by the Swiss banker and lawyer, Jean-Jacques Gautier. Since then the APT has become a leading organisation in its field. Its expertise and advice is sought by international organizations, governments, human rights institutions and other actors. The APT has played a key role in establishing international and regional standards and mechanisms to prevent torture, among them the Optional Protocol to the UN Convention against Torture.

The APT's vision is a world without torture or any other cruel, inhuman or degrading treatment. To achieve this vision the organization works within three integrated areas:

- Transparency in places of detention: Promoting a system of visits by independent experts to prisons and other places where people are held in detention.
- Effective laws and policies: Lobbying with governments to ratify the Optional Protocol to the UN Convention against Torture and other international and regional anti-torture treaties.
- Capacity for prevention: Creating partnerships for prevention within countries, bringing governments, police services, judges and lawyers, national human rights institutions and civil society together in the fight against torture.

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# Executive Summary

Five years after the Optional Protocol to the UN Convention against Torture (OPCAT) came into force, the Association for the Prevention of Torture (APT) convened the Global Forum on the OPCAT: *Preventing Torture, Upholding Dignity: from Pledges to Actions*, on 10 and 11 November 2011 in Geneva. This event brought together an unprecedented group of over 300 experts, implementers and practitioners in the prevention of torture from around the world, to take stock of the OPCAT's novel system for preventing torture thus far and identify concrete ways it can be strengthened.

This document is the outcome report of the OPCAT Global Forum; it seeks to provide an analytical record of the rich and constructive interactions that took place over two days. Key focus areas of discussion were: the OPCAT as a living instrument; how the OPCAT mechanisms (the UN Subcommittee on Prevention of Torture and National Preventive Mechanisms) can be strengthened; understanding the prevention of torture and how it can be ensured in practice; and strategies for effectively preventing torture through the OPCAT in the different regions of the world.

The OPCAT Global Forum reemphasised that although there are challenges, by working together it is possible to find concrete ways to strengthen the prevention of torture through the OPCAT: this report highlights the suggested ways forward and ideas for actions for different stakeholders from the discussions. The APT hopes it will provide a reference for those working directly with the OPCAT system, as well as a promotion and advocacy tool for actors seeking to prevent of torture worldwide.



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# Abbreviations

APT	Association for the Prevention of Torture
ASEAN	Association of Southeast Asian Nations
CAT	UN Committee against Torture
CPT	European Committee for the Prevention of Torture
CPTA	Committee for the Prevention of Torture in Africa
EU	European Union
HRC	Human Rights Council
IACHR	Inter-American Commission on Human Rights
ICRC	International Committee of the Red Cross
LPM	Local Preventive Mechanism (in Federal States)
MENA	Middle East and North Africa
NGO	Non-governmental organisation
NHRC	National Human Rights Commission
NHRI	National Human Rights Institution
NPM	National Preventive Mechanism
OHCHR	Office of the United Nations High Commissioner for Human Rights
OPCAT	Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
RCT	Rehabilitation and Research Centre for Torture Victims
SAARC	South Asian Association for Regional Cooperation
SPT	UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
UPR	Universal Periodic Review
UN	United Nations
UNCAT	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UNHCR	United Nations High Commissioner for Refugees

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# Foreword

The last decade has been a seminal period for the prevention of torture. With the adoption of the Optional Protocol to the UN Convention against Torture (OPCAT) in 2002 and its entry into force five years later, we saw the establishment of the first truly preventive system for combating torture and other ill-treatment worldwide. Since then, the challenge has been in putting the vision of the OPCAT into practice.

During this time, the Association for the Prevention of Torture (APT) has also had to adapt from being the organisation behind the drafting and adoption of the OPCAT to be a provider of advice and support on its implementation. The APT convened the OPCAT Global Forum because we believe that to strengthen the OPCAT system, it makes a lot of sense for those persons directly involved in its application to share and learn from different experiences. This required the APT to interest a rather complex network of government authorities, UN experts and varied national actors. However, almost everyone who was invited turned up and many at their own expense.

In order to ensure that a maximum of positive practices were exchanged (after 5 years of the OPCAT) and that the meeting identified the real challenges, in a constructive and motivating way, much effort went into the design, preparation and functioning of the Forum. I believe it paid off as participants were mobilised with more ideas and a renewed sense of global solidarity in the prevention of torture cause.

This partnership approach is a fundamental aspect of the approach of the APT. We now hope that the success of the Forum will convince everyone how mutually beneficial it is to cooperate in prevention measures. We can change pledges into actions that will more effectively prevent torture and other ill-treatment. The message was also clear for the APT that we must find new ways of providing relevant and timely advice, in a variety of languages to a growing number of motivated persons on the front lines of prevention.

**Mark Thomson**

Secretary General

Association for the Prevention of Torture (APT)

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# Introduction

In November 2011, the Association for the Prevention of Torture (APT) organised a Global Forum, in Geneva, Switzerland to commemorate the first five years of the entry into force of the Optional Protocol to the UN Convention against Torture (OPCAT). The Forum gathered participants working with different aspects of the OPCAT: on an international level, but most importantly, it gathered members of National Preventive Mechanisms (NPMs) from countries that have been working with the OPCAT for the past five years.

This publication is a testimony to the profound success of the Forum, measured by the level of commitment shown by the participants, who had come together to further the objectives of the Protocol. And, for me, it is a special honour to be invited in this introduction, to recall here my closing words at the event.

I said it then and repeat it now, that these words were meant to remember with gratitude all of those who for more than 20 years worked very hard, up until December 2002 when the General Assembly of the United Nations approved the OPCAT as a valuable tool in the fight to prevent torture. This long process has had difficult times in which hope was almost lost but, the strong determination of those of us who believed in the transcendental importance of the Protocol, kept us together and fighting. The last two years, beginning in 2000, were crucial and very intense. They were marked by the introduction of the proposal for the international body to be complemented by national mechanisms, that would be closer and more immediate to detention centres.

We were always opposed by countries that did not want to approve a new international instrument, which required the creation of an international Sub-Committee responsible for monitoring the implementation of the respective standards. In the short period of two years, there were also voices of countries that, although sympathetic with the idea of adopting the Protocol, did not believe that national mechanisms would strengthen the international one. On the contrary, they sincerely believed this would weaken it.

The opposition of both groups – the Protocol's enemies as well as the friends of the Protocol who did not believe in national mechanisms – was so intense that it was announced that in order to finalise the work done by the working

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group a vote would have to be called, which provoked bitter reactions. It was at this point when I, as the group's President and responsible for its decisions, had my first doubts.

The night before the vote was one of the worst nights I have ever experienced. What if the friends of the Protocol were right by saying that national mechanisms would be a fatal mistake? And if so, at the time of its application, would those mechanisms weaken the long-sought goals of preventing torture, helping to improve conditions in detention centres and being the early alert we wanted? What if we, believers of National Preventive Mechanisms, were wrong?

Before then, I had told no one about these distressing doubts that were in my mind as I came to preside over the group that cold February morning in 2002. These were doubts I had to overcome in order to commence the voting process on the President's draft, that was finally adopted.

That is why when arriving at this Forum organised by the APT without having an idea of who was going to attend or what had happened in the past five years (my duties as a judge of the International Criminal Court having forced me to devote my attention almost exclusively to international criminal justice), I experienced an intense and very profound emotion. I could hardly believe that all these countless people of different ages, backgrounds and geographical origins, were the living reality of those National Preventive Mechanisms which we all dreamt about once.

It was hard for me to contain the intense emotions that shook me inside. I realised, with tearful eyes, that we were not wrong; that the members of NPMs are those who give the OPCAT strength, direction, and momentum and hope to achieve its objectives. It has been demonstrated here at the Global Forum.

With the effective work of the Sub-Committee and the work already done and still to be done by the NPMs, we can say that we have left behind doubts and promises. Now, it is time for actions, to continue working together as we did before and will do forever.

**Elizabeth Odio Benito, Costa Rica**

Judge, International Criminal Court

Chairperson, Open-ended Working Group on the Draft Optional Protocol to the UN Convention against Torture

February 2012

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# Acknowledgements

This publication compiles the ideas and discussions which emerged from the OPCAT Global Forum. It would not have been possible to publish this report without the active participation of all experts and professionals present in the Forum, the excellent presentations done by the Panellists and the efforts of the Moderators to gather the essential elements to be discussed.

The APT would also like to extend its gratitude to Ms Jem Stevens, APT Delegate (and former Asia and Pacific Programme Officer), who compiled and analysed all your contributions to provide you with the present report.

The APT would also like to thank its staff for their contributions to the OPCAT Global Forum and to this present report, in particular Ms Audrey Olivier, the OPCAT Programme Officer and the driving force behind the Forum.

Finally, the APT would like to take this opportunity to thank the volunteers for their help during the Forum and the Forum staff for their dedication throughout the year, in particular Ms Stéphanie Burgenmeier, Ms Mireille Gheryani and Ms Emilie Linder, Mr Adrian Moore, Web & IT Manager, as well as APT's Administrative Assistant Ms Catherine Felder who all helped the OPCAT Programme Officer to make the Forum the unique encounter that it turned out to be.



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# About the Global Forum on the OPCAT

The Association for the Prevention of Torture (APT) has been working for 35 years to prevent torture and other forms of ill-treatment (hereinafter “torture”) around the world. The APT’s work is built on the insight that torture most often happens in places out of public view. Opening up these places to monitoring by independent experts is therefore one of the most effective ways to prevent torture from occurring.

Three decades ago, the idea of an international treaty for a system of visits to places of detention seemed to many a utopian dream. However, through perseverance the idea started to gain ground and despite many challenges and set backs, it came to fruition – first at the regional level in Europe<sup>1</sup> – and then internationally when the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) was adopted by the UN General Assembly in 2002 and came into force in 2006.

• *The current phase is absolutely crucial in terms of paving the way for the Optional Protocol to exert its full potential for the prevention of torture.* •

Juan Méndez, UN Special Rapporteur on Torture  
Keynote speech of the Forum

The OPCAT establishes a system of unannounced and unrestricted visits to places of deprivation of liberty, by independent national and international monitoring bodies (National Preventive Mechanisms (NPMs) and the UN Subcommittee on Prevention of Torture (SPT)).

63 countries have now ratified the OPCAT.<sup>2</sup> A further 22 countries are signatories to the treaty, with many more expressing interest. However, there have also been challenges in implementing the OPCAT’s system for torture prevention.

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<sup>1</sup> The European Committee for the Prevention of Torture (CPT) was set up under the Council of Europe’s “European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment”, which came into force in 1989. See [www.cpt.coe.in](http://www.cpt.coe.in)

<sup>2</sup> At the time of the OPCAT Global Forum (10–11 November 2011) there were 61 States Parties to the OPCAT. For up to date figures on the number of States Parties, please see the UN Status of Treaties webpage: [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9-b&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9-b&chapter=4&lang=en)

With the benefit of five years of experience since the OPCAT came into force, the time was right to take stock of how the OPCAT's system for torture prevention is working in practice. The APT therefore convened the Global Forum on the OPCAT, *Preventing Torture, Upholding Dignity: from Pledges to Actions* on 10–11 November 2011 in Geneva, with the objectives of:

- Taking stock of progress, results and impact of the OPCAT system
- Identifying challenges, gaps and ways forward in OPCAT implementation
- Mobilising, via the OPCAT, a variety of potential actors on torture prevention
- Reviewing the role of the SPT to reinforce its impact
- Reviewing the role of NPMs to reinforce their impact
- Invigorating collaboration and actions to better prevent torture worldwide

In the first-ever global meeting of torture prevention actors, the OPCAT Global Forum brought together over 300 experts, practitioners and implementers from 90 countries. Participants included representatives of most States Parties and States Signatories to the OPCAT; National Preventive Mechanisms (NPMs); the UN Subcommittee on Prevention of Torture (SPT); the UN Special Rapporteur on Torture; other UN bodies; regional mechanisms on torture prevention; national human rights institutions (NHRIs) and NGOs active in the prevention of torture. Audiences in different parts of the world also viewed the event via live webcast.

*“My spirits were lifted by this coming together of so many people from across the world who believe in the prevention of torture.”*

Dr. Silvia Casale, Former CPT and SPT Chairperson

*“Focusing for two days on one issue: I really needed such a meeting to resource myself.”*

A member of Parliament,  
Lebanon

This unprecedented gathering provided the opportunity for exchanges among actors working at all different levels (international, regional and national) and in different sectors (inter-governmental, governmental, civil society), all with one objective in mind: seeking ways to better

prevent torture and protect the rights of persons deprived of their liberty. The combination of expertise from all over the world made for rich interactions, in an atmosphere of enthusiasm, sharing and working together.



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A variety of speakers and moderators were invited to lead the debates and key questions were posed for discussion:

- Is the OPCAT an innovative treaty?
- What makes ratification campaigns and implementation advocacy effective?
- How to enhance the SPT's impact?
- How to ensure the effectiveness of NPMs?
- What does the prevention of torture mean in practice?
- How to achieve an inclusive approach to the prevention of torture?
- How to get recommendations implemented?
- How to ensure investment in the prevention of torture?

In addition to plenary sessions, parallel thematic sessions and regional roundtables were held to allow for genuine debates in which participants could actively contribute with their concrete experiences. The regional roundtables enabled key actors from each of the five regions to sit together, in some cases for the first time, to discuss the realities on the ground and strategies needed to better prevent torture through the OPCAT in their parts of the world.

Over two days, the OPCAT Global Forum demonstrated the strength of the global torture prevention movement. It encouraged those who took part to return to their work with renewed optimism and energy, knowing they are not alone in this endeavour. Most importantly, it affirmed that by working together, it is possible to find concrete solutions and ways forward to challenges faced in preventing torture through the OPCAT. In this way, the meeting reflected its title: *Preventing Torture, Upholding Dignity: from Pledges to Actions*.

*“I have been advocating for ratification for years. But now, after the Forum, I really do believe that the OPCAT works in practice.”*

A human rights activist from a MENA country

The Global Forum on the OPCAT was held with the financial support of the Swiss Federal Department of Foreign Affairs, the United Kingdom Foreign and Commonwealth Office, the International Organisation of La Francophonie, the Canton of Geneva, and the Cities of Geneva and Meyrin.

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# About this document

This document is the outcome report of the Global Forum on the OPCAT. It provides an analytical record of the key issues, achievements, challenges and ways forward, discussed at the OPCAT Global Forum. The APT chose this format rather than proceedings, to provide a more concise and accessible document, which it hopes will serve as a reference for those working with the OPCAT system, as well as a promotion and advocacy tool for actors working to strengthen the prevention of torture worldwide. In addition, the wealth of information in the speeches, presentations and discussions in the plenary and thematic parallel sessions of the OPCAT Global Forum were webcasted and are available in video format on the APT's website ([www.apr.ch/opcatforum](http://www.apr.ch/opcatforum)). The present document is designed so that it can be used in whole, or split into separate sections. It reflects the discussions of participants over the two-day event and does not necessarily represent the opinion of the APT.

The outcomes of the OPCAT Global Forum feature in the following sections of this report. Section I gives an overview of the outcomes. The report is then split into four thematic sections (II to V) and one regional section (VI) (these draw both from the related parallel session, as well as relevant discussions across the two-days). Each section includes information on the panellists from the relevant session; an analytical summary of the discussions; specific ways forward for strengthening the prevention of torture and the OPCAT system that were identified; and suggested additional readings. Section VII, *From Pledges to Action*, includes a compilation of ideas for actions from the discussions, sorted according to the stakeholder to whom they are addressed.

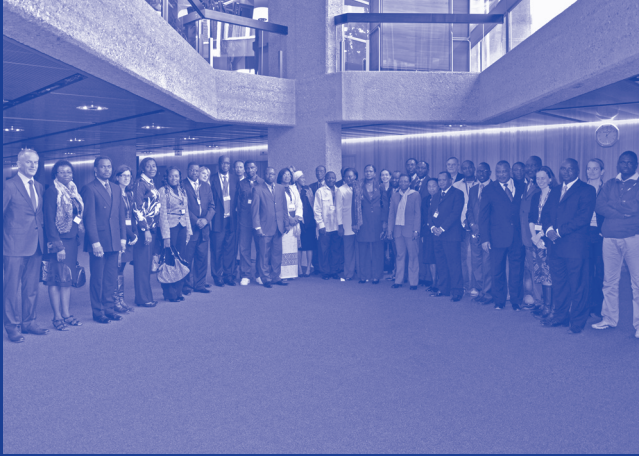
The Annexes provide key background materials: the agenda, participant list, a general background briefing paper and selected background readings. In addition, all relevant documents and information on the OPCAT Global Forum, including: a detailed agenda, list of speakers, links to presentations, briefing notes prepared for each thematic and regional parallel session and information for the media, as well as the above mentioned webcasts of sessions, can be found on the APT's website ([www.apr.ch/opcatforum](http://www.apr.ch/opcatforum)). An electronic version of this report will include links to documents and video footage, for easier navigation.

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# Outcomes of the Global Forum on the OPCAT

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# Overview of Outcomes



The Global Forum on the OPCAT re-emphasised the urgent need to work on the prevention of torture. More than ever, the risk of torture exists everywhere. In democratic states, national security commonly triumphs over human rights, for example in the context of the so-called “war on terror”, “tough on crime” policies and the means used to obtain confessions. Persisting issues such as overcrowding in prisons and lack of staff inevitably lead to abuses. What is at stake goes beyond prisons and equally concerns migrant or juvenile detention centres, as well as psychiatric institutions.

• *Some regimes use torture systematically and murderously, but it is not just the monopoly of rogue states and dictators...in this context prevention is absolutely essential.* •

Abdou Diouf, Secretary General of the Francophonie

In this context, and five years after the OPCAT entered into force, it is timelier than ever to bring all actors together to take stock of the OPCAT, the first international treaty focusing exclusively on the prevention of torture, and its implementation. The OPCAT Global Forum recognised the important achievements of the OPCAT so far, but also noted that numerous challenges remain. In two days of discussions among an exceptional group of experts

and practitioners, the OPCAT Global Forum identified key ways in which the prevention of torture and the OPCAT system could be strengthened.

### **The OPCAT: a living instrument**

The OPCAT is innovative in the way that it combined and built on elements of existing treaties providing for independent visits to places of detention. It is still in its early stages of development and the way that it is interpreted and applied in this phase will have huge bearing on the extent to which it meets its potential to prevent torture. It has already had positive impact. But more work needs to be done, e.g. to make sure its mechanisms (SPT, NPMs) feel they are part of an international system and benefit from contact and collaboration with each other.

### **Effective OPCAT campaigns and advocacy**

Advocacy and campaigning has been key in ensuring progress with the OPCAT worldwide. The OPCAT Global Forum discussions identified key elements of a successful campaign. These include ensuring political will to stop torture as a priority, and broad coalitions to work on ratification, including government and parliamentarians. There are still many misunderstandings surrounding the OPCAT – campaigning and awareness-raising is needed to dispel these.

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## **Strengthening OPCAT mechanisms: the SPT**

A core question raised by the OPCAT Global Forum is how can the OPCAT mechanisms – the SPT and NPMs – be strengthened? The SPT is operational but suffers from a lack of resources. Nevertheless, it has the potential to play a far greater role by using its political leverage, expanding its “tool box” of actions and diversifying ways of engaging with states and NPMs. It could reflect on its confidential working methods and develop creative ways of engaging with wider audiences, to avoid leading to secrecy hindering follow-up and implementation. OPCAT actors are also looking to the SPT for guidance on key issues, including what the OPCAT requirements for NPMs mean in practice.

## **Ensuring NPM effectiveness**

With their focus on domestic implementation, NPMs have the potential to make real changes on the ground. But the quality of existing NPMs varies significantly. To be effective, they must meet OPCAT requirements and independence. In addition, they need to carry out their work with credibility, cooperation with the authorities and transparency. NPMs also need to go beyond their narrow mandates to embrace the wider meaning of torture prevention and become leaders and opinion formers in this field. The need for a system of NPM assessment was expressed, with different suggestions on who would be best placed to conduct this.

## **The prevention of torture**

A general consensus emerged that torture prevention requires a holistic and long-term approach, which seeks to reduce the risks of torture occurring in the future. Because it relies on constructive dialogue with the authorities, there are particular risks in the face of lack of political will – a major problem in many regions and one that preventive actors must address strategically. Torture prevention involves understanding and addressing the broader causes of torture, including fighting impunity. A challenge is how preventive bodies can integrate this into their every day work.

## **An inclusive approach**

To be effective, torture prevention requires an inclusive approach. This means not just engaging with wider spectrum of actors including judges, parliamentarians, medical doctors, staff working in places of detention and persons formerly deprived of liberty, but also ensuring that the issues of



vulnerable groups are mainstreamed into preventive work. OPCAT actors need to visit all types of places where persons are deprived of their liberty. More engagement is needed to foster public opinion that torture is wrong and should be prevented at all costs.

### Ensuring the prevention of torture is effective

There are two persisting challenges in ensuring the effective prevention of torture in practice: getting recommendations implemented and guaranteeing investment in torture prevention. Crucially, participants underscored that the responsibility for recommendations and their implementation lays both with the issuing and receiving bodies. Key elements that increase the likelihood of implementation were identified. To ensure investment in torture prevention, more work needs to be done to show the economic, social and political costs of not preventing torture. In addition, better coordination and creativity can open doors for action, even where there are budget constraints.

### OPCAT in the regions

There is significant disparity in terms of OPCAT-related progress between the world's regions. Europe and Central Asia has the largest number of States Parties and NPMs, but the quality of NPMs is varied. Next are Latin America and Africa, where ensuring the designation of effective NPMs and their functioning is a priority in face of current delays in implementation. In Asia-Pacific and the MENA region, which have the least ratifications, misconceptions about the nature of the instrument still need to be addressed. In all regions, discussions highlighted the need for partnerships and intra and cross-regional exchanges of experience to strengthen OPCAT campaigns and NPMs. Participants recommended better engaging with regional and international mechanisms to promote the OPCAT, and emphasised the potential of the SPT in encouraging OPCAT ratifications and effective NPMs.

*“From the discussions I had with the APT and some participants, I am convinced that thanks to combined efforts of all of us, we will be able to implement the common objective we agreed upon. The Office will continue to bring its support in the framework of its mandate and available resources.”*

Mahamane Cissé-Gouro,  
Regional Representative for  
West Africa, Office of the UN  
High Commissioner for Human  
Rights (OHCHR)





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# The OPCAT: in Spirit and Practice



# 1. The OPCAT: A Living Instrument

## The OPCAT in spirit

The spirit of the OPCAT is in many ways that of a group of individuals, who through their lives and experiences were shocked by what torture is. They believed it was the worst thing that could be done to any human being. The idea pioneered by the Swiss man, Jean-Jacques Gautier, and shared by others, was to provide a practical option to prevent torture: one that was less academic and sought to go into the places where torture was occurring. After many years of drafting and negotiation, obstacles and challenges, the idea came to fruition at the international level when the UN General Assembly adopted the OPCAT in 2002.

### ■ Panellists in session 7: OPCAT as an innovative treaty or same as usual?

Mr Matt Pollard, Senior Legal Adviser, Amnesty International, United Kingdom

Ms Elizabeth Odio Benito, International Criminal Court (Judge); Former Chairperson, OPCAT Drafting Working Group, Costa Rica

Mr Mahamane Cissé-Gouro, Regional Representative, OHCHR Regional Office – West Africa, Senegal

Ms Aya Kuwayama, Researcher, Centre for Prisoners Rights, Japan

**Moderator:** Ms Mervat Rishmawi, Human Rights Consultant, Palestine

## An innovative treaty or same as usual?

The OPCAT seeks to reduce the risk of torture occurring by opening up places of detention to the outside world, through visits by independent monitoring mechanisms. This idea is not new – for example it underpins the work and mandate of the International Committee of the Red Cross (ICRC)<sup>3</sup> and the European Committee for the Prevention of Torture (CPT).<sup>4</sup> However, the OPCAT is innovative in the way it combined existing elements, with some new twists, to create its unique ‘genetic code’.<sup>5</sup> In particular, it introduces a focus on domestic implementation to prevent torture at the national level.

<sup>3</sup> See [www.icrc.org](http://www.icrc.org)

<sup>4</sup> See [www.cpt.coe.int](http://www.cpt.coe.int)

<sup>5</sup> Presentation of Matt Pollard, Senior Legal Advisor, Amnesty International.

### **The ‘genetic code’ of the OPCAT features:**

- A global two-pillar system of visits by international and national mechanisms: the UN Subcommittee on Prevention of Torture (SPT) and National Preventive Mechanisms (NPMs).
- The SPT is a different kind of UN treaty body, with the dual mandate to visit places of detention in States Parties and provide advice on torture prevention.
- With NPMs, a UN human rights treaty has focused for the first time on domestic implementation through direct legal regulation of national institutions. NPMs are given unfettered access to all places of deprivation of liberty in their countries.
- A UN Special Fund to financially support implementation of SPT recommendations and NPM educational programmes.

### **The OPCAT: A living creature**

The OPCAT is a living creature: its system of prevention is in its early stages and is still developing. A lot will depend on how its provisions are applied in practice. There are already some examples of innovative interpretation:

- *Unannounced visits.* Although the word unannounced is not mentioned in the OPCAT, it is positive that the SPT and most states have interpreted the OPCAT as requiring NPMs to have access to places of detention at all times, without prior notice. The laws or practices of the majority of NPMs expressly include the ability to conduct unannounced visits.
- *UN Special Fund:* the first call for applications (in November 2011) demonstrated strategic forward thinking: the four thematic priorities set out aim at direct and concrete changes ‘on the ground’; and only States Parties who requested the SPT to publish their country visit reports are eligible to apply.

### **Impact of OPCAT**

Five years since its entry into force, the OPCAT is already starting to show results:

- Recommendations of the SPT and NPMs have led to immediate actions (for example the closing down of a detention centre in Paraguay).
- OPCAT actors have contributed to changes in laws and regulations as well as within institutions (for example through training).

- The process of establishing effective NPMs has encouraged states to give greater attention to the reform of laws to criminalise torture as well as their own processes of detention and how people are treated.
- The OPCAT has provided a model for independent monitoring mechanisms to guide states and civil society. This is particularly useful in countries without a history of independent monitoring, such as Japan.

“The original ideas [behind the OPCAT] led to this beautiful tree; it is still small; we have to intend for it to grow...”

Elizabeth Odio Benito, Former Chairperson, OPCAT Drafting Group, Costa Rica

### Risk of business as usual?

At the same time, so far the designation of most NPMs has involved the addition of their torture prevention mandate to the responsibility of a general-purpose human rights institution or ombudsperson’s office. This creates a risk of “business as usual” unless changes are made to their working methods to emphasise preventive rather than reactive work, and the budget of these bodies is properly expanded to allow for NPM work. In addition, preventive bodies, including the SPT and NPMs need to make sure that they embrace the wider scope of prevention of torture.

## WAYS FORWARD FROM DISCUSSIONS

- For more work to be done to develop the international *system* of prevention of torture envisaged by the OPCAT, so the OPCAT mechanisms (SPT and NPMs) feel they are part of this system and benefit from contact and cooperation with each other.
- For the OPCAT bodies to be innovative in applying their mandates in a way that leads to most effective prevention of torture (in the same way that most NPMs have developed the practice of unannounced visits to places of detention).
- For the OPCAT bodies to embrace a wider understanding of their mandate on prevention of torture (not just visits, reports and recommendations, but also engaging with a wide variety of relevant actors, providing policy advice and acting as a driving force for change, including on the broader causes of torture).
- For NPMs to be provided with sufficient resources to carry out their mandate effectively.



## ADDITIONAL READINGS

- APT briefing paper, *OPCAT as an innovative treaty or same as usual?* (session 7 of the Global Forum on the OPCAT) (2011)
- APT, *Letting in the light: 30 years of Torture Prevention* (2007)
- APT, *20 ans consacrés à la réalisation d'une idée: recueil d'articles en l'honneur de Jean-Jacques Gautier* (1997):
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- Casale, Silvia: *A system of preventive oversight in Preventing Torture in the 21st Century: Monitoring in Europe Two Decades On, Monitoring Globally Two Years On Part I*, Essex Human Rights Review (Special Issue 2009)



## 2. Successful OPCAT Campaigns and Advocacy

Much of the progress in relation to the OPCAT in the last five years has been thanks to active advocacy and campaigning, especially by national actors. Taking advantage of this experience, the OPCAT Global Forum asked: *what are the elements of successful OPCAT campaigns and advocacy?* The focus of discussions was on ratification campaigns but many of the key points are relevant for promoting OPCAT implementation.

### Elements of a successful OPCAT campaign

*Start with political will to stop torture*

But how can this be achieved?

- Develop arguments and awareness, starting with the right not to be tortured. We have to make officials realize that they are also citizens and could end up in prison tomorrow.
- Show the cost benefit of torture prevention.
- A little political will can go a long way and should be capitalized on (see below on finding allies in government).

• *The Arab spring reminded us that everybody can end up in prison. The authorities are also citizens and can end-up one day in prison like everybody else.*•

Eva Abu Halaweh, Human rights Defender, Jordan

### *Countering misconceptions of the OPCAT.*

Many actors do not understand the OPCAT and therefore have reservations about what it will mean. Campaigners need to be able to counter these common misconceptions, through clear simple messages and campaign materials.

### ■ **Panellists in session 1: Ratification Campaigns and Implementation Advocacy**

Mr Ellecer Carlos, Advocacy Officer, Commission on Human Rights, Philippines

Mr Ghassan Moukheiber, Parliamentarian, Lebanon

Mr Seydi Gassama, Director, Amnesty International, Senegal

Mr Ulugbek Azimov, Legal Expert, Independent Human Rights Group, Kyrgyzstan

**Moderator:** Ms Sylvie Bukhari-de Pontual, President, FIACAT, France

**Common misconceptions about the OPCAT:**

- *“States should improve detention conditions before they ratify the OPCAT.”*
- *“The OPCAT infringes on state sovereignty” and “the SPT’s public criticism will reflect badly on the state.”*
- *“The OPCAT protects criminals but neglects the victims of crime.”*

**Counterarguments:**

- The whole purpose of the OPCAT is to assist states to improve conditions and treatment in detention, through expert advice and practical solutions.
- The OPCAT mechanisms work in cooperation with the authorities, they do not name and shame. The SPT works confidentially unless the state chooses otherwise.
- First, the OPCAT is not just about prisons, but also for example about mental health hospitals and social care homes. People in these places are in the state’s care and are vulnerable – the OPCAT seeks to improve systems to prevent abuse. This also means improving the conditions for staff. If done well, it can contribute to reduction in reoffending as well.

*Broad coalitions:* NGO coalitions can be important driving forces, but civil society alone cannot achieve ratification. Others need to be on board, in particular from government and parliament, and to work in collaboration.

- A key step in a campaign is to identify allies (“Trojan horses”) in government institutions and parliament, who can raise the issue. Resistance should be taken seriously, and dialogue held to overcome it.
- Coalitions should be broader than activists working on prisoner’s rights. They should include other groups and individuals with relevant expertise and experience, including people formerly deprived of their liberty.
- The diplomatic community can provide leverage. Regional bodies can be important for countering arguments that torture prevention is a western concept.
- Local government can be encouraged to declare “torture free zones”.

- In countries of transition, dissident movements are leading on prisoner's rights because they have experienced detention. But once this memory is lost, which social groups will take the lead on torture prevention?

### Example: political mapping in the Philippines

The OPCAT campaign in the Philippines started with a political mapping project to identify kindred spirits in the legislature, through questionnaires.

*"This work, complemented by other undertakings, later resulted in a House of Representatives Resolution urging the President and Senate to ratify the OPCAT,"* said Ellecer E. Carlos, Commission on Human Rights, Philippines

*Be strategic and prepared:*

- Research before the campaign can inform strategies and strengthen arguments. It can include political mapping and studies on the situation of torture.
- Campaign materials and information documents suited to each level of the process should be prepared.
- Make use of digital activism, e.g. social media, websites, blogs and regular updates to advocacy partners through mailing lists.
- National actors can draw on the support of international NGOs.

*The link between the OPCAT, torture prevention and accountability:* OPCAT campaigns need to be put in the broader context of combating torture, including the fight against impunity. NPMs should not be used by states to avoid obligations to ensure accountability.

## WAYS FORWARD FROM DISCUSSIONS

For successful OPCAT campaigns and advocacy:

- Start OPCAT campaigns and advocacy by seeking to ensure political will to prevent torture.
- Seek broad coalitions, with civil society, government, parliamentarians, former detainees etc. Involve more police unions and associations of victims of crime.

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- Engage in more political mapping to understand the position of decision makers. Find allies in government. Take resistance seriously and engage in dialogue to overcome it.
  - Provide clear and simple communication to dispel the common misconceptions about the OPCAT. Prepare targeted materials; use digital activism and the support of international NGOs.
  - Use the UN human rights system, e.g. lobby for OPCAT ratification as a pledge for UN Human Rights Council membership and take the opportunity of the Universal Periodic Review to get recommendations to ratify the OPCAT adopted.
  - Engage with the general public, including on “uncomfortable” issues such as the rights of victims of crime and public calls for more security.
  - Engage regional actors and diplomatic community.
  - Show the link between the OPCAT and the broader fight against torture, including the fight against impunity, for example conduct parallel campaigning (e.g. on anti-torture legislation) and collaborate with actors working on accountability and prosecutions.



## ADDITIONAL READINGS

- APT briefing paper, *Ratification campaigns and implementation advocacy* (session 1 of the Global Forum on the OPCAT) (2011)
- Olivier, Audrey and Marina Narvaez, *OPCAT Challenges and The Ways Forward: The ratification and implementation of the Optional Protocol to the UN Convention against Torture in Preventing Torture in the 21st Century: Monitoring in Europe Two Decades On, Monitoring Globally Two Years On Part I*, Essex Human Rights Review (Special Issue 2009)
- APT/IIHR, *Optional Protocol to the UN Convention against Torture, Implementation Manual* (revised edition 2010); Chapter IV
- UN Subcommittee on Prevention of Torture, *Guidelines on National Preventive Mechanisms*, UN.Doc CAT/OP/12/5 (9 December 2010)
- APT, *National Human Rights Commissions and Ombudsperson's Offices/ Ombudsmen as National Preventive Mechanisms under the Optional Protocol to the UN Convention against Torture* (2008)

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- APT, *Civil society and National Preventive Mechanisms under the Optional Protocol to the UN Convention against Torture* (2008)
  - APT, *Proceedings of the first regional meeting on the OPCAT in South America* (2007)
  - APT, *The Dakar Plan of Action: 8 points plan for prevention of torture and other ill-treatment in Africa* (2010)





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# Strengthening the OPCAT Mechanisms





# 1. Enhancing The SPT's Impact

The SPT is a new kind of treaty body in the UN human rights system, with a proactive and preventive mandate based on sustained cooperation. It conducts visits to places where people are deprived of their liberty and provides advice to strengthen the prevention of torture in States Parties.

At the time of the OPCAT Global Forum, the SPT had conducted 14 visits to States Parties – including one follow-up visit – and published four annual reports as well as other important policy papers.<sup>6</sup> With 25 members, it is now the UN's largest treaty body. It is seeking ways to make its work more effective, including allocating specific roles and responsibilities among its members. The OPCAT Global Forum asked: *how could the SPT's impact be further enhanced?*

## ■ Panellists in session 6: Enhancing SPT's impact

Ms Elina Steinerte, Research Associate, Human Rights Implementation Centre, Bristol  
Mr Wilder Tayler, SPT Member

Mr Nadim Houry, Senior Researcher, Human Rights Watch, Lebanon

Ms Diana Vargas, Coordinator, Human Rights Department, Supreme Court of Justice, Paraguay

**Moderator:** Ms Therese Rytter, Programme Manager and Legal Adviser, RCT, Denmark

## Challenges for the SPT

A lack of resources is a major challenge for the SPT. At the time of the OPCAT Global Forum, it visits three countries a year, which means that at this rate, each State Party may receive an SPT visit roughly every 20 years – this is clearly not what was envisaged by the OPCAT's "regular visits". However, even within current resources, there are ways that its impact can be enhanced.

## How can the SPT's impact be enhanced?

- *Methods of engagement:* The SPT has so far concentrated on formal in-country missions, with a focus on visiting places of deprivation of liberty. But other modes of engagement could be more effective. For example, smaller SPT delegations could visit countries for working meetings with

<sup>6</sup> As of May 2012, the SPT had conducted 17 visits to States Parties, including one follow-up visit and one advisory visit on NPMs – and published its fifth annual report.

NPMs and State Parties, depending on the opportunities and potential impact in each context.

- *Political leverage:* In its in-country missions, the SPT has focused on inspection visits to places of detention. It has the potential for greater impact by using its political leverage to engage with states on pressing issues, especially the designation and strengthening of NPMs.

• *The promise of the SPT is that it is the largest UN human rights treaty body, which goes to the field and is part of an official system with a constellation of national bodies, given legitimacy by an international treaty.*•

Wilder Tayler, SPT Member

- *Places of deprivation of liberty:* The SPT should diversify the types of places it visits, to ensure that it protects the rights of all persons deprived of their liberty (for example, out of 220 places visited, five have been mental health facilities). The criteria for selecting countries and types of place of detention to visit should be fine-tuned and the process should be more transparent.
- *Strengthening NPMs:* The SPT could have greater positive impact on the mandate and work of NPMs. There were discussions on whether the SPT could conduct an “assessment” of NPM compliance with the OPCAT, which were not conclusive (see next section).

• *It is high time to explode the myth that the SPT should only interact with NPMs and States parties through formal in-country missions.*•

Mark Thomson, APT Secretary General

Another suggestion was that the SPT could anyway take a stand on the issue of OPCAT compliance and possibly on the quality of NPM work. One possibility would be to do this first confidentially with states and subsequently publically if necessary. Some participants suggested that the SPT could also undertake joint visits with NPMs as a way to facilitate mutual learning and capacity strengthening.

- *Follow-up:* This is key for impact. The SPT has so far conducted one follow-up visit. However, the issue of follow-up is broader than carrying out follow-up visits: there is a need for a more comprehensive SPT strategy to ensure the implementation of its recommendations, including through continued engagement with states and other actors outside the context of official missions.
- *Confidentiality:* The confidentiality of SPT communications with states, as required by the OPCAT, was discussed. There was general agreement

that this facilitates cooperation with states but it is not an aim in itself – it should not result in secrecy hampering implementation and follow-up. It was proposed that there could be a reflection within the SPT about what elements of its work need to be confidential: confidentiality of visit reports should be respected, but creative ways could be found to engage with wider audiences (for example public debates, publication of recommendations only). Some participants suggested that the SPT could encourage states to make public commitments on actions the SPT has recommended, in particular in the context of NPM designation. NPMs and civil society actors could then follow up these commitments.

- *Cooperation and interaction with a range of actors*: this is at the heart of the SPT's mandate. It could interact with a wider range of torture prevention actors, including civil society organizations – not only during visits but also through regular contacts and communications.

## WAYS FORWARD FROM DISCUSSIONS

For the SPT:

- Increase its leadership in torture prevention, including by better using its political leverage on pressing issues related to torture prevention.
- Diversify its “tool box” on torture prevention so that the focus of its missions to countries and types of visits it conducts to places of detention are based on the potential impact it can have.
- Reflect internally about what elements of its work need to be confidential and where it could develop creative ways of engaging with wider audiences (for example holding public meetings, encouraging states to make public commitments).
- Take a position on NPMs’ compliance with OPCAT requirements and their quality of work – either confidentially with the state or publically or both, in order to strengthen NPMs.
- Find more creative ways of using its existing budget in order to have maximum impact.
- Engage with a wider range of actors relevant for the prevention of torture, in particular civil society organisations at the national level (including through communication outside the context of official missions).

### What happened next?

- The Subcommittee on Prevention of Torture announced a greater engagement with National Preventive Mechanisms. It will implement a new programme of visits called “NPM advisory visits”: three visits of that type are planned in 2012 to Honduras, Moldova and Senegal.
- The Subcommittee on Prevention of Torture is moving towards more transparency. It is now announcing the dates of its in-country mission a few months in advance and made them available on its website. It also provides brief information about the issues discussed during its sessions that are held in camera.



### ADDITIONAL READINGS

- APT briefing paper, *Enhancing SPT's impact* (Session 6 of the Global Forum on the OPCAT) (2011)
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- APT/CPT, *New Partnerships for Torture Prevention in Europe – Proceedings of the Strasbourg Conference*, November 2009 (Thematic Panel 3)
- European Committee for the Prevention of Torture, *Issues raised by the CPT's representatives at the meeting with the UN Subcommittee on Prevention of Torture established under the OPCAT*, CPT (2007/23), 5 March 2007

## 2. NPM Effectiveness: How to Make it Work?

At the time of the OPCAT Global Forum, there were 37 NPMs designated, with the majority operational.<sup>7</sup> However, there has been a delay in setting up NPMs in many countries. And the mandates, working methods and experience of NPMs vary significantly. Some NPMs do not fully meet the requirements set out by the OPCAT. Seeking to benefit from the first years of NPM work, the OPCAT Global Forum therefore asked *what are the key ways to ensure that NPMs are effective in their work to prevent torture?*

### Establishment and mandate of NPMs:

Many conditions for NPM effectiveness are already spelled out in the OPCAT<sup>8</sup> – the discussions elaborated on some of these.

- *Independence*:<sup>9</sup> NPMs need to be free from government influence. This means that they must also be supported by parliament, i.e. their mandates should be enshrined in law or the constitution. NPMs should be provided with sufficient resources to carry out their work effectively. At the same time, the meaning of independence in practice needs to be better elaborated – this could be done by the SPT.
- *Powers*: NPMs must have the power to access all places of detention<sup>10</sup> without restriction, to access all documents<sup>11</sup> and to have the opportunity to meet with all persons deprived of their liberty in private,<sup>12</sup> as well as other relevant sources and stakeholders.<sup>13</sup>

### ■ Panellists in session 3: NPM's effectiveness: how to make it work?

Mr Jean-Marie Delarue, General Controller of Places of Deprivation of Liberty (NPM), France

Ms Isabel Mansur, Member of Local Preventive Mechanism, Rio de Janeiro, Brazil

Ms Lauretta Vivian Lamptey, Chairperson, Commission on Human Rights and Administrative Justice, Ghana

**Moderator:** Mr Kerem Altiparmak, Professor, Human Rights Centre, Ankara University, Turkey

<sup>7</sup> i.e. conducting visits to places of deprivation of liberty, producing reports and recommendations. As of May 2012, there were 41 designated NPMs. For further information, see [www.apt.ch](http://www.apt.ch).

<sup>8</sup> OPCAT articles 18 to 23

<sup>9</sup> OPCAT article 18

<sup>10</sup> OPCAT article 20(c)

<sup>11</sup> OPCAT article 20(a) and (b)

<sup>12</sup> OPCAT article 20 (d)

<sup>13</sup> OPCAT article 20 (d)

- *Structure*: there is no structure for NPMs prescribed by the OPCAT. The form chosen should depend on an analysis of institutions that could play the NPM role and possible gaps. The structure of the NPM should be designed on the basis of an inclusive consultation process.

• *The experience and quality of the professionals is not enough to guarantee the effectiveness of an NPM. The commitment of staff to the subject and issues of persons deprived of their liberty is also crucial.*•

Isabel Mansur Member of Local Preventive Mechanism, Rio de Janeiro, Brazil

## Functioning and work of NPMs

- *Methodology*: Where NPMs are included in an existing institution, there needs to be a change in working method to emphasise prevention rather than reaction. Visiting methodology should reflect international practice (e.g. of the ICRC, SPT, CPT etc).
- *Credibility and legitimacy*: NPMs need to be credible in the eyes of the authorities, detainees, civil society and the public. This can be achieved if 1) members of the NPM have social legitimacy (eg. are known and respected); 2) members and staff are committed; 3) the NPM conducts serious high quality work; 4) the NPM maintains objectivity in its work and reporting, for example by not taking sides and corroborating all information received; and 5) by ensuring accountability and transparency within the NPM itself.
- *Cooperation with authorities*: NPMs need to build mutual confidence with government authorities. There is a balancing act between establishing cooperation and being able to criticize situations on the one hand, and the risk of being too close and co-opted by the authorities on the other.
- *Public awareness and transparency*: It is important to build public awareness of the NPM's work. The media can be a good partner for NPMs, but NPMs need to define a communication strategy in order not to be instrumentalised. NPMs can also use their own website and creative means to get their work known. There needs to be a balance between publicity and maintaining cooperative relationships with authorities. NPMs can address this by having clear procedures on the submission of reports to authorities (for example confidentially at first) and the publication of information.
- *The role of civil society*: NGOs can strengthen NPMs by supporting them, for example by providing experts to take part in visits and technical advice, or by acting as watchdogs of NPM work.

### Example: A clear NPM media policy in France

*“The French NPM has a clear media policy. First of all, during a visit and until the report is finalised, we make no comments to the media. Secondly, after the visit report is prepared, we can talk to the media about our findings but information relating to individuals remains confidential. We then publish all our reports on our website a few months after the visit. Thirdly, to inform opinion about our way of working, we’ve also made a documentary film explaining our visits and what we do.”* Jean-Marie Delarue, General Controller of Places of Deprivation of Liberty, France.

### Overarching issues for NPM effectiveness

- *Being a leader in torture prevention:* NPMs should be more than bodies conducting visits, producing reports and recommendations. They should address systemic causes of torture (see above) and provide guidance to the authorities on prevention, including through dialogue, education and trainings. The ideal is for their work to be a driving force for positive change in the prevention of torture.
- *Assessing NPMs:* Participants expressed the need for a system to assess the compliance of NPMs with OPCAT requirements, as well as their quality of work. There was a discussion about how this could be done and by whom. Some participants suggested the SPT could play a role, while others thought it might not best placed, as its mandate is to work in partnership with NPMs. Another proposal was that it could be done by an international NGO or coalition of NGOs. It was suggested that “accreditation” might not be an appropriate term as it is associated with the existing system for NHRIs.<sup>14</sup>
- *Exchanges of practice:* NPMs have a lot to learn from each other, as well as from outside experts. Networks and exchanges (for example through meetings and workshops, staff placements in other NPMs, a database of good practices) would assist NPMs to improve their working methods.

<sup>14</sup> A peer-to-peer system by the Accreditation Subcommittee under International Coordinating Committee (ICC) of National Human Rights Institutions. For further information, see: <http://nhri.ohchr.org/EN/Pages/default.aspx>.

## WAYS FORWARD FROM DISCUSSION

- For states to ensure that NPMs are independent, have a mandate enshrined in law and sufficient resources to carry out their work effectively.
- For the SPT to elaborate what key OPCAT requirements for NPMs mean in practice, for example “independence”.
- For NPMs to seek credibility through ensuring the expertise, commitment and objectivity of their staff.
- For NPMs to seek to be leaders in torture prevention, going beyond visits, reports and recommendations to influence policy and public debate on how to stop torture occurring.
- For groundwork to be conducted on setting up a system for assessing the compliance of NPMs with the OPCAT and their quality of work, to strengthen NPMs. The first step would be considering how and by whom this should be done.
- For an exchange of practices between NPMs to be encouraged and facilitated, to assist NPMs to improve their working methods.
- For civil society organisations to seek to strengthen NPMs (for example by providing experts to take part in NPMs visits and technical advice, or by acting as monitors of NPM work).



## ADDITIONAL READINGS

- APT briefing paper, *NPM's effectiveness: how to make it work?* (Session 3 of the Global Forum on the OPCAT) (2011)
- Murray, Rachel, Elina Steinerte, Malcolm Evans and Antenor Hallo de Wolf, *The Optional Protocol to the UN Convention against Torture*, Oxford University Press, Chapter IV (2011)
- APT/IIHR, *Optional Protocol to the UN Convention against Torture, Implementation Manual* (revised edition 2010), Chapter IV
- UN Subcommittee on Prevention of Torture, *Guidelines on National Preventive Mechanisms*, UN.Doc CAT/OP/12/5 (9 December 2010)
- UN Subcommittee on Prevention of Torture, *Analytical self-assessment tool for National Preventive Mechanisms, a preliminary guide by the*



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- UN Subcommittee on Prevention of Torture, *Fourth annual report of the UN Subcommittee on Prevention of Torture*, UN Doc. CAT/OP/C/46/2, (3 February 2011)
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- APT, *Visiting places of detention: what role for physicians and other health professionals?* (2008)
- UN Special Rapporteur on Torture, *Interim Report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/66/268 (5 August 2011)
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# The Prevention of Torture And Other Ill-Treatment



# 1. What Is Torture Prevention?

The idea at the heart of the OPCAT is that torture is a terrible attack on human dignity and everything must be done to prevent it. The understanding of torture prevention has evolved over the years, from one initially focusing on visits to places of detention to a more holistic endeavour. Five years after the entry into force of the OPCAT, the OPCAT Global Forum therefore asked: what are the defining elements of torture prevention, *what are the challenges faced in this approach and how can these be addressed in practice?*

## Key elements of the preventive approach

Discussions revealed a general agreement on its key elements:

- Torture prevention involves analyzing the risks of torture occurring and trying to reduce these risks. In this way, it complements work focusing exclusively on individual cases of torture.
- It involves a holistic approach looking at all relevant factors impacting on the conditions and treatment of detainees.
- Visits to places of detention by independent bodies (including the OPCAT bodies: the SPT and NPMs) are key to the prevention of torture.
- It involves dialogue and cooperation with authorities. It aims to provide better information (including through visits, analysis, reports and recommendations), to increase the knowledge of responsible authorities about how to meet their obligations and respect the rights of persons deprived of their liberty.

“Torture prevention is not about asking what happened and how it happened, but asking why it happens and how we can stop it happening.”

Victor Rodriguez, SPT member

### ■ Panellists in session 2: Particularities of the preventive approach

Mr Victor Rodriguez Rescia, SPT Member

Mr Greg Price, Chief Inspector, Ombudsmen's Office (NPM), New Zealand

Mr Edouard Delaplace, Adviser, Detention Unit, ICRC, France

Ms Dupe Atoki, Chairperson, Committee for the Prevention of Torture in Africa

**Moderator:** Mr Walter Suntinger, Austrian Human Rights Advisory Board, Austria

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## A broader understanding of prevention of torture

At the same time, the prevention of torture means understanding the causes of torture – institutional, normative, political, cultural, socio-economical, structural – and addressing these. Torture prevention can therefore involve a wide range of actions, such as legal reform, ensuring criminal responsibility and safeguards in detention, the fight against impunity and ensuring remedies and reparations. The causes of torture will depend on many factors, such as the country, specific context and type of place of detention.

A key question raised is: to what extent are the broader causes of torture taken up by mechanisms for the prevention of torture in their every day work – and how can they do this in practice?

### Challenges in the preventive approach

#### ■ *Keeping sight of the individual in the prevention of torture*

The original idea behind ensuring visits to places of detention was to bring back humanity to the victim and in doing so deter abuse. With the focus on addressing the root causes of torture and the time and resource constraints of every day work, there is a risk of forgetting about the individual within work to prevent of torture. But it can be ensured by keeping private interviews and the time to listen and provide space to detainees at the heart of torture prevention work.

#### ■ *Resistance and disengagement of authorities.*

Given that working with the authorities is central to torture prevention, can it work without that cooperation? Resistance can come in various forms and degrees. Some states legitimize torture and are not interested in improving situations in detention. Others refuse to provide sufficient resources for prevention.

#### **Risk factors impacting on the prevention of torture**

The risk of torture is increased with:

- The triumph of national security over human rights
- Militarization of societies
- Responses to drug wars
- Overcrowding of prisons
- Privatization of prisons
- Corruption in the administration of justice
- The use of private security firms
- Countries “exporting” torture

### ■ *How to implement torture prevention in practice?*

Despite institutional, normative and practical developments in torture prevention, including with the OPCAT, there is still no generally agreed preventive methodology. There is therefore a need for an operational definition of torture prevention to facilitate coordinated action and a shared understanding of how to implement it in practice.

### ■ *New standards for torture prevention?*

What is needed is not so much new standards, but their more stringent application (for example regarding access to legal counselling, solitary confinement). But there could be added value in compiling existing standards for monitoring vulnerable groups in detention, as well as elaborating international standards on certain issues such as allowing access to places of detention, for example for civil society.

## WAYS FORWARD FROM DISCUSSIONS

- For the SPT and/or academia to develop a concrete methodology on torture prevention, so that there is general agreement on what it means in practice.
- For preventive mechanisms to address the broader causes of torture, while not losing sight of the individual (detainees and torture survivors).
- For preventive actors to take informed and strategic decisions when faced with resistance or disengagement from the authorities keeping in mind the possibility of opening up future avenues for cooperation, while ensuring they are not used for window dressing.



## ADDITIONAL READINGS

- APT briefing paper: *Particularities of the preventive approach* (Session 2 of the Global Forum on the OPCAT) (2011)
- International Committee of the Red Cross, *Policy on torture and other ill-treatment inflicted to persons deprived of their liberty* (2011)
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- APT, *Preventing torture: an operational guide for National Human Rights Institutions* (2010)
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## 2. An Inclusive Approach to Torture Prevention

### Why an inclusive approach to torture prevention?

As torture prevention is a holistic, multi-disciplinary endeavour, it must involve actors from diverse backgrounds, with a wide range of skills and experiences.

An inclusive approach is also a legal obligation. The UN Convention against Torture (UNCAT) provides for action on numerous fronts (for example, legal, medical, judicial etc). Fulfilling these obligations requires engaging with an array of actors with different expertise and knowledge. In addition, the OPCAT covers all places of deprivation of liberty, including ‘non-traditional’ places such as mental health facilities, children’s homes, drug treatment centres and care homes for older people etc.

### Engaging with whom?

An inclusive approach involves action on two fronts:

- Engaging officials and specialists who have a mandate and responsibility to contribute to torture prevention. This includes judges, lawyers, doctors and forensic experts, as well as educators, teachers, professional associations (such as medical and bar associations) trade unions and the media.
- Engaging victims, service users and former detainees. This means ensuring a victim-centred approach to torture prevention, focusing on the person, their rehabilitation and their perspective on what can be done to stop torture occurring.

#### ■ Panellists in session 8: Achieving a more inclusive strategy on torture prevention

Mr Juan Méndez, UN Special Rapporteur on Torture

Ms Suzanne Soukoude, Judge, Togo

Mr Oliver Lewis, Director, Mental Disability Advocacy Centre, Hungary

Ms Alice Edwards, Senior Legal Coordinator, UNCHR

**Moderator:** Ms Martine Anstett, Head of Division, International Organisation of La Francophonie, France

‘The discussions highlighted that an inclusive approach to torture prevention is not just a best practice, it is also a legal obligation.’

Phil Lynch, Executive Director, Human Rights Law Centre, Australia (Rapporteur for session 8)

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## How to ensure an inclusive approach?

Education is key and it can be ensured through a variety of means. For example, national consultations on the OPCAT, as have taken place in many countries including Togo, can provide an opportunity to present a powerful education against torture. They are also crucial for developing a common strategy among these actors. In addition, it is important that torture prevention bodies do not focus exclusively on traditional places of detention – to ensure that other vulnerable groups receive equal protection.

## Better coordination

At the same time, many of the actors mentioned are already working in their different fields to contribute to the prevention of torture, with clear roles. The question is therefore *how to better coordinate and collaborate*.

## What does it mean in practice? Examples of two vulnerable groups:

- *People with mental health disabilities* – mental health care centres and secure psychiatric units are often overlooked by preventive bodies. People with actual experience of these places can provide important insights if included in monitoring teams. In addition, there is a need to compile standards regarding the detention of people with disabilities for monitoring bodies.<sup>15</sup>
- *Refugees and asylum seekers* – to prevent torture and ill-treatment of these groups, there needs to be a move away from unnecessary detention to community-based processes. The underlying issues of racism and xenophobia, discriminatory processes and torture, needs to be addressed. The media can shine a spotlight and provide migrants, refugees and asylum seekers with a human face.

## Challenges

- There is a lack of necessary expertise in some countries, for example medical, psychiatric and forensic, which needs to be improved. But it was also suggested that former detainees and service users could provide

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<sup>15</sup> In a broader sense, there is also increasing recognition of the need to deinstitutionalise persons who are deprived of their liberty with disabilities and for these persons to be cared for in the community.

valuable insights into the culture and risk factors in different types of places of deprivation of liberty if they are included in monitoring teams.

- Officials from some ministries (i.e. health and education) tend to be reluctant to engage in torture prevention-related consultations. Engaging with young nurses and teachers is a way to lay the ground for future cooperation.

## WAYS FORWARD FROM DISCUSSIONS

- For states to find a balance between creating new institutions (NPMs) and investing in and coordinating existing actors in the prevention of torture—this balance should be found on the basis of context and potential impact.
- For monitoring bodies to visit a variety of places of detention, not exclusively focusing on ‘traditional’ places such as prisons.
- For the issues of vulnerable groups to be mainstreamed into monitoring work. Compiling standards for monitoring vulnerable groups would help monitors in this role.
- For monitoring bodies to possibly include victims of torture, service users and persons formerly deprived of liberty in their monitoring teams, as they can provide important first hand perspectives on systems, cultures and risk factors.
- For torture prevention actors to seek the perspective of torture survivors on what can be done to stop torture occurring.

### What happened next?

Torture prevention was the focus of the regional consultations on “*Enhancing the cooperation between the UN and regional human rights mechanisms*” organised by the Office of the High Commissioner for Human Rights on the basis of the Human Rights Council Resolution (A/HRC/15/56). Consultations were held in the African, American, and European regions. They represented an ideal opportunity to bring the discussions of the Forum to the field and coordinate torture prevention strategies amongst different actors.



## ADDITIONAL READINGS

- APT briefing paper, *Achieving a more inclusive strategy on torture prevention* (Session 8 of the Global Forum on the OPCAT) (2011)
- Edwards, Alice, *The OPCAT and the detention of refugees*, International and Comparative Law Quarterly, (2008)
- APT/IPU/ICJ, *Law and Justice: The Case for Parliamentary Scrutiny*, Seminar for members of parliamentary human rights bodies organised jointly by the Association for the Prevention of Torture, the Inter-Parliamentary Union and the International Commission of Jurists (September 2006)
- Amnesty International, *Combating torture, a manual for action* (2003)
- APT, *Visiting places of detention: what role for physicians and other health professionals?* (2008)
- The OPCAT Research Team, Bristol University, *The OPCAT and the UN Convention on the Rights of People with Disabilities: Some Common Issues* (2009)
- APT, *The role of lawyers in the prevention of torture* (January 2008)
- The United Nations Human Rights Council, Resolution on *Torture and other ill-treatment: the role and responsibility of judges, prosecutors and lawyers*, UN. Doc A/HRC/RES/13/19 (15 April 2010)
- Reventlow, Miriam, Susanne Kjær, and Helen McColl, *Health professionals in the fight against torture*, in *Preventing Torture in the 21st Century: Monitoring in Europe Two Decades On, Monitoring Globally Two Years On Part II*, Essex Human Rights Review (Special Issue 2009)
- APT, *The OPCAT: An opportunity for Refugee and Migrant Rights Protection* (May 2009)
- APT, *Protecting asylum seekers, refugees and migrants in detention*, APT position paper (February 2012)



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# Ensuring the Prevention of Torture in Practice



# 1. Getting Recommendations Implemented

Recommendations and their implementation are key to ensuring that torture prevention works in practice. However, many preventive mechanisms still face significant challenges in getting recommendations implemented. The OPCAT Global Forum therefore asked: *What are the main challenges in getting recommendations implemented and what concrete steps can be taken to overcome them? What factors make recommendations more likely to be implemented?*

## What are the main obstacles for implementation of recommendations?

The main obstacles are lack of political will, financial, social and human resources, the quality of the recommendations themselves and follow-up by preventive bodies, as well as lack of public awareness of the recommendations. It is worth analyzing why recommendations are not being implemented, in order to inform proper follow-up. On the positive side, there are some clear steps that can be taken to make them more likely to be implemented.

## Whose responsibility is it to ensure implementation of recommendations?

Discussions highlighted that both the issuer (e.g. torture prevention bodies) and the receiver (e.g. the state) have responsibilities in relation to recommendations and their implementation:

- The issuing body must ensure the quality of its recommendations.
- The state should designate official(s) to be responsible for entering into dialogue on, and ensuring implementation of, recommendations relating to torture prevention. It should also properly disseminate recommendations to beneficiaries and the public.

### ■ Panellists in session 5. Getting recommendations implemented

Ms Jeehan Mahmood,  
Commissioner, Human Rights  
Commission (NPM), Maldives  
Mr Gnambi Garba Kodjo, Director  
Penitentiary Services, Togo  
Mr Luciano Mariz Maia, Regional  
Prosecutor, Brazil  
Ms Yakin Ertürk, CPT Member,  
Turkey

**Moderator:** Ms Silvia Casale,  
Former CPT and SPT Chairperson,  
United Kingdom

## Key ways to increase implementation of recommendations

- *Quality of recommendations*: recommendations that are clear, targeted, realistic, concrete, time-bound, based on credible facts and that reference national and international standards are more likely to be implemented. Among other things, timing will depend on the type of recommendation (for example, those relating to structural issues will take more time to implement than those on material conditions in detention).
- *Prioritisation*: Recommendations should be prioritised in terms of which need to be implemented first and for which there can be incremental implementation. It can increase the likelihood of implementation if authorities are consulted about timelines for implementation.
- *Constructive dialogue*: It is critical for torture prevention bodies to engage in continuous constructive dialogue with the state concerning their recommendations and implementing measures. NPMs should not consider themselves as a watchdog, but rather as a day-to-day interlocutor with the authorities, with recommendations being the basis for this interaction.

• *Sometimes recommendations are not implemented because the people who are supposed to benefit from them are not aware of them.*•

Gnambi Garba Kodjo, Director  
Penitentiary Services, Togo

### Example: getting recommendations implemented in the Maldives

The NPM of the Maldives found that their recommendations were much more likely to be implemented if they were supported by those of the SPT. *“While 51% of the NPM’s recommendations have been implemented so far, 48% of these were backed up by SPT recommendations.”* Jeehan Mahmood, Commissioner, Human Rights Commission of the Maldives.

- *Mutual reinforcement*: Recommendations are more likely to be implemented if they are mutually reinforced by other bodies at the national, regional and international levels, including by visiting bodies, courts and human rights mechanisms. This experience was highlighted in the Council of Europe, where the European Court of Human Rights has referred to reports of the European Committee for the Prevention of Torture in at least 88 judgments.



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- *Understanding budgets:* given that a lack of resources is often raised as an obstacle to implementation, torture prevention bodies should obtain information on the budgets of relevant institutions and analyze these. This should inform recommendations regarding budget allocation, made to the right bodies (e.g. the parliament, the relevant ministry) at the right time (i.e. when budgets are being set). Furthermore, there are often recommendations that do not require extra resources and some that can be implemented step by step.

## WAYS FORWARD

*For NPMs, the SPT and other torture prevention bodies (NGOs, NHRIs):*

- Draft recommendations that are clear, targeted, realistic, concrete, time-bound, based on credible facts, that reference national and international standards and are prioritized.
- Engage in budget analysis to make informed recommendations to the right institutions at the time of budget setting.
- Engage in continuous constructive dialogue with authorities on the basis of recommendations.
- Employ strategies to obtain the mutual reinforcement of recommendations by bodies at the national, regional and international levels, including by visiting bodies, courts and human rights mechanisms.
- Analyse the reasons for non-implementation and base follow-up on these.

*For states:*

- Designate officials (individuals or a specific body, for example focal points or working groups) to be responsible for entering into dialogue on recommendations and ensuring their implementation.
- Engage in incremental implementation of recommendations.
- Properly disseminate recommendations on the prevention of torture to beneficiaries and the public, in particular so that the people who are supposed to benefit from them are fully aware of them.



## ADDITIONAL READINGS

- APT briefing paper, *Getting recommendations implemented* (Session 5 of the Global Forum on the OPCAT) (2011)
- Office of the High Commissioner for Human Rights, *Call for application to the OPCAT Special Fund* (2011)
- APT/ European Committee for the Prevention of Torture, *New Partnerships for Torture Prevention in Europe – Proceedings of the Strasbourg Conference*, November 2009 (Thematic Panel 3)
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- APT/CEJIL, *Torture in International Law – A Guide to Jurisprudence* (2008)
- European Committee for the Prevention of Torture, *Advisory Pilot Project: Report and Recommendation*, CPT (2004/42), 3 March 2004
- European Committee for the Prevention of Torture, *Implementing the CPT recommendations*, CPT (2002) 61, 27 September 2002

## 2. Ensuring Investment in Torture Prevention

### What does investing in torture prevention mean?

Investing in torture prevention means providing resources for institutions and measures that contribute to reducing the risk of torture occurring. In the context of the OPCAT, a key aspect of this is funding bodies such as National Preventive Mechanisms and the SPT, as well as the implementation of their recommendations. But this is not enough. A whole range of factors require funding, including ensuring an independent and proper functioning criminal justice system, training and education for officials, ensuring the criminalization of torture etc.

#### ■ Panellists in session 4: Investing in Torture Prevention

Ms Roselyn Karugonjo-Segawa,  
Director Monitoring and  
Inspections, Human Rights  
Commission, Uganda

Mr Claude Wild, Head of Human  
Security, Federal Department of  
Foreign Affairs, Switzerland

Ms Odalis Najera, Member,  
National Commission for the  
Prevention of Torture (NPM),  
Honduras

**Moderator:** Ms Karen McKenzie,  
Acting Head, Human Rights Unit,  
Commonwealth Secretariat, United  
Kingdom

### Obstacles for investment in torture prevention

A lack of funds is commonly raised as the limitation for investing in torture prevention. However, it is just as likely that lack of political will to prioritise torture prevention is behind non-investment.

### How to increase investment in torture prevention?

Ensuring increased investment in torture prevention often relies on perseverance and proactiveness from organizations seeking funding. Several key strategies were identified in the discussions:

- *Showing the costs of not investing in torture prevention:* It is difficult to show the exact economic costs of not preventing torture. But it is clear that the consequences of torture are often long term and difficult to repair, for individuals, their families and the community.

• *The Arab spring occurred in the context of systematic torture, disappearances and arbitrary detention etc. Therefore without clear mechanisms of prevention there cannot be political stability. This shows that prevention is cost-effective in the long-run.*•

Mervat Rishmawi, Human  
Rights Consultant, Palestine

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The costs of rehabilitation, reintegration and compensation can be extremely high, and are often borne by the state. In addition, torture and other injustices damage trust within society and in the state, contributing to political instability. It is therefore in the interest of governments to invest in torture prevention.

**Example: using creative ways of gaining support in Uganda**

A documentary made by the Human Rights Commission of Uganda showed that in the long run torture costs more than its prevention, and creates lack of trust in the government – this helped to raise awareness amongst the public and potential donors.

- *Creative ways of gaining support:* Use of different media, such as film, can be powerful in getting the message about the need for torture prevention across.
- *Continue to capture the interest of the donor community:* It should be encouraged to export the idea of torture prevention. Donors often want to see the impact of torture prevention, which is difficult to measure. But instead of focusing on quantitative changes, the focus could be on qualitative ones to keep the issue alive within the donor community. Donors can also match financial investment with advocacy and political leverage on torture prevention and related issues, such as the fight against impunity.
- *Get parliamentarians on board:* The parliament normally allocates the state budget so it is essential that parliamentarians understand torture prevention work and its importance. This can also take time. For example, the Human Rights Commission of Uganda was initially funded by international donors. As their work became better known, they were able to secure 75% of their budget from the state through the parliament.
- *SPT engagement:* An SPT visit to an OPCAT State Party can have an important impact on ensuring funding for incipient NPMs, as it did for example in Honduras.

### **The need for coordination, efficiency and creativity**

Although ensuring investment in torture prevention is important, a better coordination among all stakeholders, including donors, is needed in order to be cost effective and to avoid duplication of activities. In addition, with creativity and perseverance, a great deal can be achieved even with a limited budget. For example, for over nine months the Honduras NPM worked out of premises offered by a lawyer, before securing funding from international donors for office space and operations. Despite having no means of transport, it was able to conduct visits thanks to the support of NGOs, which have been instrumental in enabling it to start operations.

### **The need for state backing**

Torture prevention is primarily the responsibility of the state. The work of preventive mechanisms such as NPMs is based on cooperation and constructive dialogue with authorities. As such, although funding from the donor community can be important to enable operational work, it is extremely difficult for NPMs to fulfil their mandates effectively if they do not have the backing, including through investment, of the government.

## **WAYS FORWARD FROM DISCUSSIONS**

- Governments must properly invest in torture prevention, including preventive mechanisms, as part of their responsibility to ensure that torture does not take place.
- There is a need for developing economic, social and political counter-arguments regarding the cost of not preventing torture, including through more studies by academia on this issue.
- Practical guidance should be given to new NPMs regarding from where they can seek funding.
- For preventive actors to be creative – a lot can be done without funds if there is the will and commitment.
- Funding should be sought from organisations not focusing exclusively on torture prevention but broader rule of law issues (for example, the World Bank and development agencies).

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- For the international donor community to provide funding for torture prevention and use political leverage to promote the ratification and effective implementation of the OPCAT.
  - For the international donor community to better coordinate funding and political actions for torture prevention to make it as effective as possible.



## ADDITIONAL READINGS

- APT briefing paper, *Investing in torture prevention* (Session 4 of the Global Forum on the OPCAT) (2011)
- APT, *Submission to OHCHR Questionnaire on Prevention* (2011)
- UN Subcommittee for the Prevention of Torture, *The approach of the SPT to the concept of prevention of torture and other ill-treatment*, UN. Doc CAT/OP/12/6 (30 December 2010)
- Open Society Foundations and United Nations Development Program, *The Socioeconomic Impact of Pre-trial Detention – A Global Campaign for Pretrial Justice Report* (2011)
- APT/European Committee for the Prevention of Torture, *New Partnerships for Torture Prevention in Europe – Proceedings of the Strasbourg Conference*, November 2009 (Thematic Panel 3)
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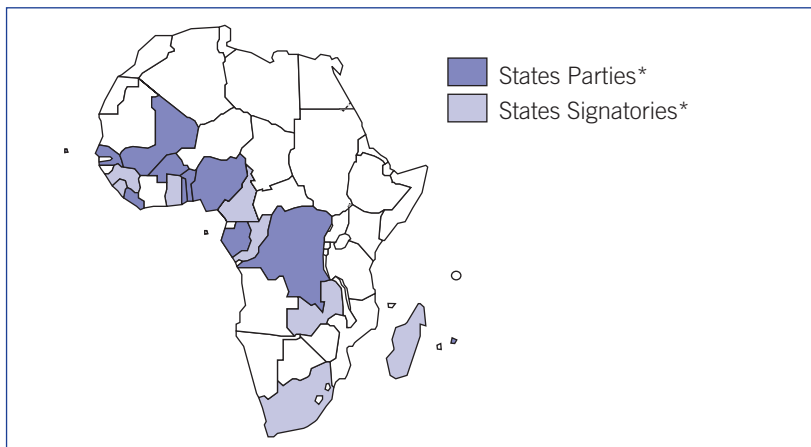
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# OPCAT in the Regions





# 1. OPCAT In Africa: Ensuring Its Implementation



There has been important progress in relation to the OPCAT in Africa in recent years. Following a Regional Conference on the Prevention of Torture in Dakar, Senegal in April 2010, ten African states had ratified the OPCAT and four had designated their NPMs at the time of the OPCAT Global Forum. However, there remain challenges in some States Parties in relation to setting up effective NPMs. A strategic consultation meeting on OPCAT in Africa was held on 9 November 2011 in preparation for the OPCAT Global Forum. Building on this, the OPCAT Global Forum's Africa Roundtable asked: *How can the Africa region fully benefit from the key issues coming out of the OPCAT Global Forum and what are the main ways forward in this regard?*

**Moderator:** Mr Jean-Baptiste Niyizurugero, Africa Programme Officer, APT

**Rapporteur:** Ms Ilaria Paolazzi, Adviser, Africa Programme, APT

## Lack of political will to implement the OPCAT

A key challenge in Africa is lack of political will to implement the OPCAT once states have ratified it. A question raised was therefore whether a regional

\* Number of States Parties and Signatories as of November 2011.

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strategy should focus on achieving more ratifications or on supporting and pushing current States Parties to take up their obligations. One strategy is to ensure informed and inclusive ratification campaigns, which can lay the ground for effective implementation. This could be achieved through inclusive local coalition groups involving key actors such as parliamentarians and the media, which can make OPCAT a priority, as well as raising awareness with the public. It was also agreed to identify positive examples of implementation to encourage a domino effect in the region.

### **Effective NPMs**

- *Essential factors:* The effectiveness of NPMs depends on a combination of legal, human, financial and infrastructural resources. The lack of any of these impacts on the NPM's work and should be tackled. Most African NPMs lack independence and material resources.
- *The power of recommendations:* NPMs in the region should be able to produce effective recommendations and indicators in order to monitor and follow-up on their implementation.
- *Leadership:* NPMs in the region also need to go beyond undertaking visits and recommendations to take on a dynamic role in torture prevention. This includes advocacy and promotion of reforms as well as awareness-raising. This role should be assured through specific powers enshrined in legislation.
- *SPT guidance:* There is a need for guidance for NPMs from the SPT and regular communication between the two. It was proposed that NPMs could systematically transmit their reports to the SPT, which in turn could make suggestions for improvements.

### **Strengthened regional and international cooperation**

Actors such as the SPT and the Committee for the Prevention of Torture in Africa (CPTA) could have an important impact on African states, encouraging them to ratify the OPCAT and implement it properly. More interaction with these bodies is therefore needed.

### **The role of civil society**

Civil society has a crucial role to play in supporting NPMs and in the prevention of torture more generally, at the national and international levels. However, the

fact that SPT reports are confidential deprives civil society of an important advocacy tool and prevents them from following up in a coordinated way. At the same time, NPMs are not obliged to keep their reports confidential, providing an opportunity for interaction with civil society.

### **A broad definition of deprivation of liberty**

In the African context, there are a number of prevalent issues that may involve deprivation of liberty but do not currently feature sufficiently in torture prevention work, for example internal displacement, statelessness, refugees, asylum seekers and immigration detention as well as community based forms of deprivation of liberty. In addition, health and mental health facilities are rarely monitored. The understanding of deprivation of liberty therefore has to be broadened in the region.

## **WAYS FORWARD FROM DISCUSSIONS**

- A regional network of NPMs or actors committed to torture prevention with regular annual meetings involving the CPTA and SPT for experience sharing and more coordinated interactions.
- A regional torture prevention meeting on the occasion of the 10th anniversary of the Robben Island Guidelines, in 2012.
- A regional website on torture prevention aimed at sharing experiences and good practices.
- Draw from experiences in other regions. For example, replicate the Council of Europe NPM project for the African region, to provide assistance to African NPMs and strengthen the link between them and the SPT.
- For NPMs to be creative, in order to have impact within limited resources. This includes being proactive in raising funds (for example through the UN OPCAT Special Fund and other donors).
- Encouraging states to publish SPT reports.
- Lobbying for regular update of the SPT guidelines on NPM effectiveness, taking into account regional specificities and new challenges in global OPCAT implementation.
- Building concrete arguments to convince states to invest in torture prevention and overcome misconceptions of the OPCAT.

### What happened next?

Almost three years after the adoption of the NPM legislation in Senegal establishing a new institution (National Observer of Places of Deprivation of Liberty), the mandate holder was appointed in January 2012. The NPM's operations are due to start in 2012.



### ADDITIONAL READING

- APT briefing paper, *Setting priorities in Africa* (Africa regional roundtable, Global Forum on the OPCAT) (2011)
- APT, *One voice, multiple actions to prevent torture*, Narrative report of the Strategic Consultative Meeting on the OPCAT for Africa and the regional roundtable in the framework of the OPCAT Global Forum, Geneva, November 2011
- African Network of National Human Rights Institutions and APT *Rabat Declaration "A continent united against torture"*, High-level conference on the role of National Human Rights Institutions, September 2011
- ACHPR, APT Amnesty International Senegal, *The Prevention of Torture in Africa* – Proceedings from the Regional Conference held in Dakar, Senegal, on 27–28 April 2010
- Bristol University, Human Rights Implementation Centre, *Relationship between the Optional Protocol to the UN Convention against Torture (OPCAT) and other international and regional visiting mechanisms*, Policy paper (2009)
- Bristol University, Human Rights Implementation Centre, *OPCAT in the African Region: Challenges of Implementation*, Summary and recommendations from Conference held 3–4 April 2008, Cape Town South Africa (2008)
- ACHPR, APT, OHCHR East Africa Regional Office, *Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa, practical Guide for Implementation* (2004)
- African Commission on Human and Peoples' Rights, *Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines)* (2002)

## 2. OPCAT In The Americas: The Need To Join Forces



The Americas have the second most ratifications of the OPCAT in the world, reflecting the strong involvement of Latin American countries in the gestation of the treaty. Fourteen countries in the region are party to the OPCAT. However, implementation is slow: only seven NPMs have been formally designated and three are currently operational. At the same time, local preventive mechanisms (LPMs) have been established in Argentina and Brazil, with one operational in Rio de Janeiro, Brazil. The Americas roundtable at the OPCAT Global Forum looked at the key areas of OPCAT ratification, NPM designation and NPM functioning, and asked: *what are the main challenges for the OPCAT in the region and how can these be overcome?*

**Moderator:** Ms Sylvia Dias, Director, APT Office for Latin America

**Rapporteur:** Ms Isabelle Heyer, Americas Programme Officer, APT

\* Number of States Parties and Signatories as of November 2011.

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### **Example: SPT impact on NPM process in Argentina**

International mechanisms such as the SPT can play a fundamental role in unblocking stalled processes. In Argentina, the active lobbying of SPT members before the Argentinean Congress was instrumental in getting the NPM law adopted by the House of Representatives.

### **Lack of political will to implement the OPCAT**

There is a clear lack of political will on the part of governments in the region to implement the OPCAT after ratifying it. To overcome this, there is a need to join forces across the region, as well as to engage a wider range of actors including regional bodies and the UN.

### **The potential role of the SPT**

The SPT could have a big impact on NPM establishment in the region. Unfortunately, its action is limited by a lack of resources – it needs to be provided with an increased budget to fulfil this role. At the same time, strategic ways for the SPT to engage within current resources can also be developed. It was suggested that two important ways are for NGOs to hold activities involving SPT members (as the APT has been conducting) and fostering direct cooperation between national NGOs and the SPT.

### **Ensuring effective NPMs:**

- *Independence*: It is crucial that independence of NPMs be ensured. This means both functional and financial independence. Providing for a public selection process of NPM members is one important factor.
- *Civil society involvement*: NGOs can strengthen NPM work; either by taking part in NPM work directly, providing technical advice or by acting as monitors of NPM work.
- *Communication with the SPT*: NPMs and local preventive mechanisms should have the possibility of communication with the SPT directly (rather than through diplomatic missions) to facilitate information sharing and guidance, as foreseen by the OPCAT.
- *Individual complaints*: impunity remains a serious issue in the region. In some cases, NPMs should be able to receive individual complaints

of torture, and either work on these directly or refer them to competent bodies.

— *A code of ethics for NPMs* could help to improve the quality of NPM work.

### **Challenges for federal states**

There are a number of federal and large decentralized states in the region, for example Argentina, Brazil, Canada, Mexico and the United States. With different levels of government, they face particular challenges in establishing National Preventive Mechanisms.

### **The Caribbean**

There are so far no OPCAT States Parties in the Caribbean and no National Preventive Mechanisms. English speaking Caribbean countries tend to identify more with Africa than Latin America, so experts could be brought from African countries to share experiences and expertise.

#### **Example: civil society helping to strengthen NPM work in Honduras**

The Honduras NPM has sought to develop strong relationships with civil society. This resulted in agreements between the NPM and some local NGOs, so that the latter provided the NPM with doctors and lawyers to take parts in NPM visits. This helped to overcome a shortage of personnel with relevant expertise within the NPM itself and to strengthen relationships between stakeholders working on prevention of torture.

### **Need to mobilize public opinion for torture prevention**

Torture prevention is not a clear concept for the public. There are criticisms that working in this field, “you are defending criminals”. There is a need for information campaigns and trainings for the media to mobilize the public and persons (formerly) deprived of their liberty for torture prevention. NGOs and universities also have a role to play in this.

## WAYS FORWARD FROM DISCUSSIONS

- Formulate a strategy on OPCAT ratification and implementation for the region, through a regional gathering on the OPCAT.
- Create a regional network to share experiences and jointly build a common strategy on advocating for and strengthening OPCAT implementation.
- Request a thematic hearing before the IACHR on prevention of torture/OPCAT implementation.
- Guarantee direct channels of communication between NPMs and LPMs and the SPT
- Build a strategy to raise awareness about the OPCAT with persons deprived of their liberty.
- Foster public information campaigns to change public opinion and the perception that “people deprived of liberty are criminals with no rights”.

### What happened next?

Following the Forum, the NPM establishment process in Chile accelerated. The Ministry of Justice of Chile officially informed the National Human Rights Institution that it will perform the National Preventive Mechanism’s mandate. Its operations are now pending the adoption of an action plan and an adequate budget to fulfil its tasks.

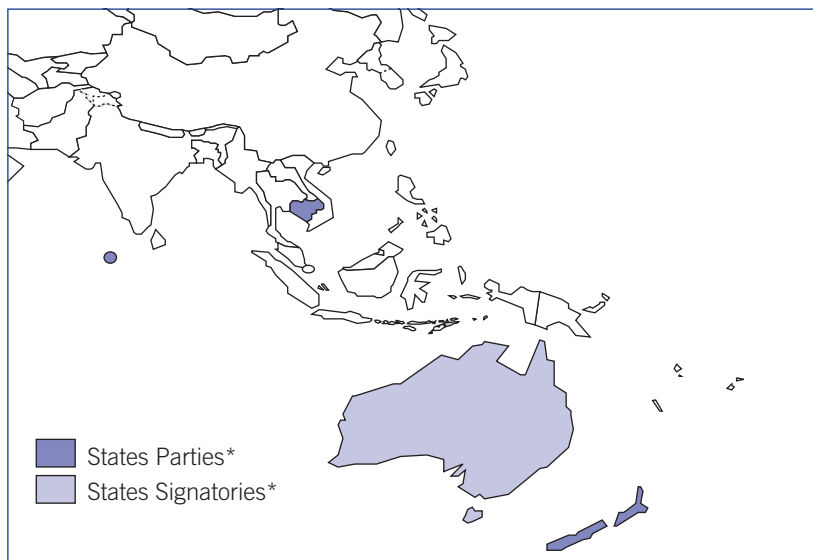


## ADDITIONAL READING

- APT briefing paper, *Setting priorities in the Americas* (Americas regional roundtable, Global Forum on the OPCAT) (2011)
- Bristol University, Human Rights Implementation Centre, *The Inter-American Commission on Human Rights’ Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas and the Optional Protocol to the Convention Against Torture* (2009)
- APT, *Proceedings of the first regional meeting on the OPCAT in South America* (2007)



### 3. OPCAT In Asia-Pacific: Dispelling The Myths



Asia-Pacific is a diverse and varied region in terms of cultures, religions and histories. With only three States Parties and two NPMs, it remains underrepresented in terms of OPCAT ratification and implementation worldwide. The Asia-Pacific roundtable at the OPCAT Global Forum asked: *what are the challenges, opportunities and ways forward for ensuring effective prevention of torture through the OPCAT in Asia-Pacific?*

**Moderator:** Mr Vincent Ploton, Institutional Development Officer, APT

**Rapporteur:** Ms Tanya Norton, Detention Monitoring Programme Officer, APT

#### Misconceptions about the OPCAT

A major (but surmountable) challenge in the region is the misunderstandings about the OPCAT and particularly the SPT. The focus on the word “torture” is misleading – it is better to put the emphasis on human dignity and reform

\* Number of States Parties and Signatories as of November 2011.

of detention systems. In countries such as Thailand, the OPCAT seems like a luxury, because the UNCAT has not been properly implemented. In the Philippines, a short briefing paper explaining the OPCAT provisions proved effective in dispelling the myths around the OPCAT.

### **Example: Changing approach in Indonesia**

*“In Indonesia, we started by trying to associate the OPCAT with torture abolition, but it was difficult to get government agencies on board. So we changed our approach to use more positive language and link it to reform of detention systems. Because of this, the Corrections Department is now on board, seeing OPCAT as a way to support prison reform.”*

Indri D. Saptaningrum, Executive Director, ELSAM Indonesia.

### **Resistance to outside scrutiny**

Part of the culture of many Asian countries is a fear of losing face – reflected in a resistance to outside scrutiny and human rights monitoring. The context is that Asia-Pacific has the lowest number of human rights treaty ratifications. The fact that the different approach of the OPCAT (which seeks to work with governments, including confidentially, and not name and shame) is suited to this context needs to be properly explained.

### **Aiming for a critical mass**

Looking at OPCAT ratifications around the world, there tend to be clusters of States Parties. This has not happened yet in Asia-Pacific, but ratifications by key states (e.g. the Philippines is close to ratifying and Australia is working towards it) could lead to a kind of domino effect, creating a critical mass for further ratifications.

### **The role of the SPT**

Experience in the region shows that the SPT can play a pivotal role in explaining the OPCAT and encouraging the establishment of effective NPMs. Governments tend to sit up and listen when addressed by an international body. In Australia, it was extremely useful to have an SPT member explain the OPCAT system at a roundtable with state officers. The SPT visit to the Maldives was instrumental in encouraging the government to designate its NPM.

## Potential in the Pacific

In addition, there are regions like the Pacific, where there are no States Parties, but public revelation and reaction to custodial incidents (i.e. riots, mass escapes, excessive use of force) has led to an accelerated agenda for security sector reform. This provides opportunities for integrating OPCAT ratification and NPMs into current reforms.

## A multi-track approach

Making progress on the OPCAT in the region will require a multi-track approach: ensuring a strong domestic constituency on the OPCAT, supported by international NGOs and the diplomatic community. More should be done to engage with sub-regional organisations such as SAARC and ASEAN (which will both be chaired by OPCAT States Parties in 2012: The Maldives and Cambodia respectively). NHRIs can be empowered and important players in OPCAT campaigns (15 of 18 have “A” status in the region). Finally, existing civil society networks, such as the Asian NGO Network on NHRIs (ANNI) could be partners for OPCAT promotion.

## WAYS FORWARD FROM DISCUSSIONS

- Conduct national campaigns to raise awareness of state officials and dispel the common myths surrounding the OPCAT.
- Develop and use short briefing papers explaining the OPCAT system to lobby the executive and parliament.
- Facilitate the exchange of practices on the OPCAT within the region.
- Organise national dialogues on the OPCAT with SPT member(s) to explain the OPCAT and promote ratification.
- Engage with regional organisations, such as SAARC and ASEAN. Encourage them to call on member states to better prevent torture through the OPCAT.
- Work with NHRIs, existing civil society organizations and networks (for example, ANNI), and the diplomatic community to promote OPCAT in the region.
- Use international human rights mechanisms (such as the UPR) to lobby for the ratification and implementation of the OPCAT.
- Aim for a critical mass of OPCAT States Parties in the region, which will lead onto other states ratifying.

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### **What happened next?**

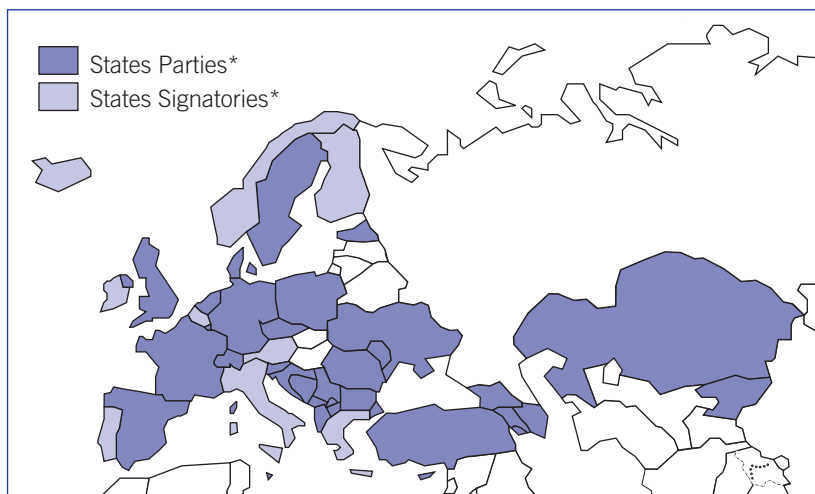
The Philippines went ahead in acceding to the OPCAT: the accession law was tabled to the Senate for its second reading a few days after the Forum. On 6 March 2012, the Senate adopted the law on accession to the OPCAT on its final and third reading. Philippines deposited the instrument of accession to the OPCAT on 17 April 2012 and became the 63rd State Party.



### **ADDITIONAL READING**

- APT briefing paper, *Setting priorities in Asia-Pacific* (Asia-Pacific regional roundtable, Global Forum on the OPCAT) (2011)
- Harding, Richard and Neil Morgan, OPCAT in the Asia-Pacific and Australasia: Themes for planned action in Preventing Torture in the 21st Century: Monitoring in Europe Two Decades On, Monitoring Globally Two Years On Part I, Essex Human Rights Review (Special Issue 2009)

## 4. OPCAT In Europe And Central Asia: Strengthening NPMs



Worldwide, there has been most progress in relation to the OPCAT in Europe and Central Asia. Almost half the State Parties and the largest number of NPMs are in the region. But there are significant differences in progress between countries in the region. In light of these developments, the Europe and Central Asia roundtable at the OPCAT Global Forum reflected on the challenges and success stories for the OPCAT in the region in the past five years.

**Moderator:** Mr Matthew Pringle, Europe and Central Asia Programme Officer, APT

**Rapporteur:** Mr Jean-Sébastien Blanc, Detention Monitoring Programme Adviser, APT

### Networks and exchanges

There have been a number of networks and platforms for exchanges among OPCAT-related actors in the region, for example the Council of Europe NPM project and Ombudsman's meetings. Although most NPMs do not yet feel that they are part of a global system as envisaged by the OPCAT, this has started a process of communication that is an important first step.

\* Number of States Parties and Signatories as of November 2011.

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### **Example: Open and inclusive OPCAT consultations in Kyrgyzstan**

*“In Kyrgyzstan we now have a very good draft law to create an NPM which fulfils the requirements of the OPCAT,”* stated Ulugbek Azimov of the Kyrgyz multi-agency OPCAT Working Group. *“The challenge now will be to engender support for it in parliament so that it receives the necessary financial backing,”* he added. The high quality of the draft law in part came about as a result of the open and inclusive manner in which the implementation of the OPCAT was discussed in Kyrgyzstan as well as the different expertise that was involved in the process, which is probably an example of good practice.

### **NPM assessment?**

There are significant differences between NPMs in the region: the quality of their work, their mandates and levels of experience. There was general agreement that a system of NPM assessment would be a way to encourage states to ensure that NPMs are OPCAT compliant and for NPMs to improve their working methods. Some participants suggested that an assessment would be difficult for the SPT to undertake, as it seeks to work in partnership with NPMs. But the SPT and CPT could provide guidance to states and NPMs. Others suggested that an independent NGO or group of NGOs could take on the assessment role. Civil society organizations in countries also have a key role to play in acting as monitors of NPM work.

### **The role of the SPT**

NPMs are looking for guidance from the SPT. It could play a bigger role, for example by:

- Providing clear guidance on what OPCAT compliance means in practical terms (such as NPM independence).
- Going on joint visits with NPMs to help build their capacity.
- Varying its level and type of engagement according to the context and needs: it does not have to be an “all or nothing” approach as it has adopted so far.

In countries that have not yet ratified the OPCAT in the region, the support of the SPT would be most useful for advocacy.

## Sharing experiences with other regions

The experience gained in OPCAT implementation in Europe and Central Asia could be shared with actors from other regions. One possibility is to include participants from other regions in networks and activities. States from the region and the EU also have a role to play in promoting the OPCAT with third countries, for example as part of human rights dialogues. However, they need to make sure that their “houses are in order first”.

### WAYS FORWARD FROM DISCUSSIONS

- Existing networks, such as the Council of Europe NPM project, could be tailored to the needs to various NPMs (in their varying levels of experience and work) and involve actors from other regions.
- A database collecting NPM practices could be developed, as a resource for NPMs seeking to develop their working methods.
- A (global) system of NPM assessment could be developed, to help improve NPM compliance with the OPCAT and quality of work.
- The SPT could contribute to NPM development in the region by providing clear practical guidance (for example on independence), conducting joint visits with NPMs and varying its engagement according to context and needs.

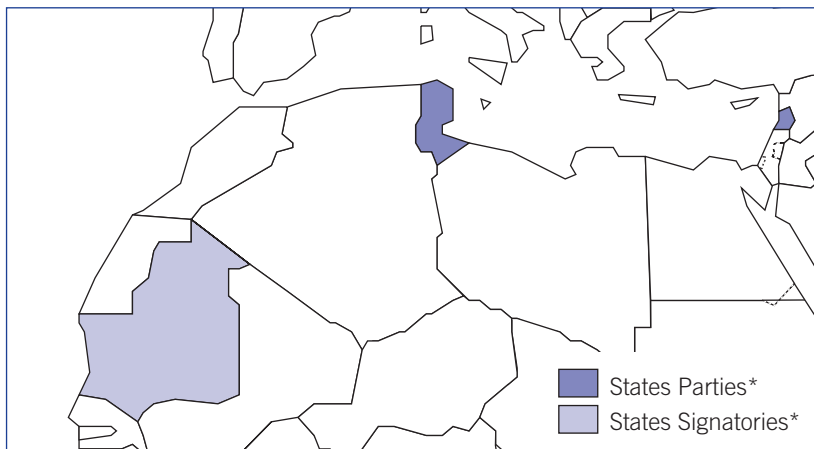


### ADDITIONAL READINGS

- APT briefing paper, *Setting priorities in Europe and Central Asia* (Europe and Central Asia regional roundtable, Global Forum on the OPCAT) (2011)
- European Committee for the Prevention of Torture, *The CPT standards*, CPT/Inf/E (2002) 1 – Rev. 2010
- APT/ European Committee for the Prevention of Torture, *New Partnerships for Torture Prevention in Europe – Proceedings of the Strasbourg Conference*, November 2009
- University of Bristol, Human Rights Implementation Centre, *OPCAT in the OSCE region: what it means and how to make it work?*, Summary and recommendations from the Conference held on 25–26 November 2008, Prague, Czech Republic (2008)

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## 5. OPCAT In The Middle East And North Africa (MENA): Preventing Torture In Times Of Transition



The MENA region currently has the lowest number of OPCAT ratifications globally (Lebanon and Tunisia are States Parties). But there are changes underfoot: popular movements across the region are calling for an end to torture and some have managed to topple autocratic leaders. With this background, the MENA roundtable at the OPCAT Global Forum asked: *how to promote OPCAT ratification and implementation in the region? What are the challenges, opportunities and next steps?*

**Moderator:** Ms Esther Schaufelberger, MENA Programme Officer, APT

**Rapporteur:** Mr Matthew Sands, Legal Adviser, APT

### The Arab spring

The recent political changes in the region with the Arab Spring have created opportunities for better preventing torture and promoting the OPCAT. NGOs and other stakeholders are more proactive and political leaders who experienced torture under old regimes are proposing constitutional reforms. However, there remain significant differences among countries in the region and international scrutiny is still not welcomed in many states.

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\* Number of States Parties and Signatories as of November 2011.



## Countries in transition

There is a lot of debate on transitional justice in the region, but it has focused on redress for past violations. There has not been enough focus on the idea of “never again”. Ratification of the OPCAT can be the tool to guide processes that guarantee non-repetition of past abuses.

## The need for a holistic approach

OPCAT ratification should be part of a holistic strategy aimed at combating torture in the region. This needs to aim at sustained change. It should include serious legislative reform to ensure that torture is criminalized (torture is still treated as a simple misdemeanour in many jurisdictions), evidence obtained through torture excluded from legal proceedings and safeguards strengthened. Prevention needs to go hand in hand with work to ensure accountability. Torture prevention must be rooted in religious values.

### Example: Strengthening constitutional safeguards against torture in Morocco

*“In a decisive step, the protection against torture was increased significantly by the new Moroccan constitution, which includes the criminalization of torture and the right to legal and procedural safeguards,”* said Hamid al-Kam, National Human Rights Council of Morocco. He referred to articles 20 and 21 of the 2011 Moroccan Constitution that specify that torture is a crime punishable by law and each detainee has to be informed immediately about the reasons for his detention, has to benefit as soon as possible from legal assistance and has the right to live in humane detention conditions and to benefit from training and reintegration programmes.

## Strategies for advocacy

A regional process is needed to join forces, share experiences and practices. Regional bodies, including the Arab League, should be brought in. Participants encouraged international organizations such as OHCHR and APT to facilitate such mutual support at the regional level. At the national-level, advocacy should not be limited to civil society, but must involve parliamentarians and others. Islamic parties, whose members have suffered torture in the past,

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are open to subscribe to torture prevention measures. Advocacy strategies should be diversified and include targeted meetings with key decision-makers in addition to larger NGO meetings. Choosing the right timing to promote ratification is also key.

### **Misconceptions about the SPT**

There are misunderstandings in the region about the role of the SPT and what its visits actually involve. More needs to be done to demonstrate the forward-looking and practical orientation of the OPCAT. States increasingly extend open invitations to Special Procedures of the Human Rights Council with no expectation of confidentiality but are still reluctant to ratify the OPCAT. It is important to show that the preventive approach is different and seeks to work cooperatively with states.

### **The impact of UN recommendations**

Recommendations of UN mechanisms such as the CAT and UPR have an important effect. Both Tunisia and Mauritania were encouraged to sign OPCAT as a result of UPR recommendations. Jordan is completing a process of constitutional reform as a result of recommendations by the CAT, which may see ratification of the OPCAT.

## **WAYS FORWARD FROM DISCUSSIONS**

- A regional community of practice could be established, with the objective to share information and motivate each other.
- A regional conference on torture prevention and the OPCAT could be held.
- Engage better with regional bodies. Encourage the Arab Human Rights Committee to draft a general comment on Article 8 of the Arab Human Rights Charter (on the prohibition and prevention of torture).
- Show that within transitions, the OPCAT is a tool for steering processes to ensure that torture “never happens again”.
- Promote the MENA block at the UN to require OPCAT ratification for Human Rights Council membership.
- Clarify misconceptions about the SPT held by actors in the region.

### What happened next?

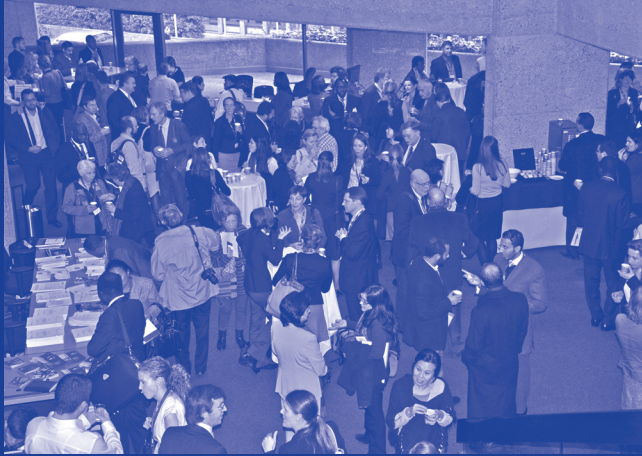
In Lebanon, the legislation establishing a new National Human Rights Institution (which would also perform the NPM mandate) was introduced to the Parliamentary Human Rights Committee in January 2012 by a Lebanese parliamentarian who participated in the OPCAT Global Forum.



### ADDITIONAL READING

- APT briefing paper, *Setting priorities in MENA* (MENA regional roundtable, Global Forum on the OPCAT) (2011)
- African Network of national Human Rights Institutions and APT *Rabat Declaration, A continent united against torture*, High-level conference on the role of National Human Rights Institutions, September 2011
- APT, *No one knows about us*, a film by Carol Mansour, Lebanon (2011)
- APT, *APT's Building Blocks for a Torture-free Future: The prevention of torture and other ill-treatment in times of transition* (2011)





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# From Pledges to Actions



The focus of the OPCAT Global Forum was identifying concrete ways forward to strengthen the prevention of torture through the OPCAT, going “*from pledges to actions*”. This section compiles the ideas for actions identified in discussions, according to the stakeholder to whom they are addressed: states, the SPT, NPMs, monitoring bodies, OPCAT supporters and campaigners, academia, the international donor community and all torture prevention actors. Many processes have already started and where they are underway, the appeal is for these to be reinforced with renewed vigour.

### **Actions for states:**

1. Ratify the OPCAT and establish an effective National Preventive Mechanism within one year of ratification.
2. Ensure that NPMs are independent; have a mandate enshrined in law and sufficient resources to carry out their work effectively.
3. Properly invest in torture prevention, including in preventive mechanisms and the implementation of their recommendations, as part of the responsibility of states to ensure that torture does not take place.
4. Designate officials to be responsible for entering into dialogue on recommendations on preventing torture (including from OPCAT bodies) and ensuring their implementation (for example focal points or working groups).
5. Engage in incremental implementation of recommendations on torture prevention where there are obstacles to full implementation.
6. Properly disseminate recommendations on the prevention of torture to beneficiaries and the public, in particular so that the people who are supposed to benefit from them are fully aware of them.
7. Find a balance between creating new institutions (such as NPMs) and investing in and coordinating existing actors in the prevention of torture, on the basis of context and potential impact.

### **Actions for the Subcommittee on Prevention of Torture (SPT):**

*To increase the SPT's impact*

1. Increase the SPT's leadership in torture prevention, including by better using its political leverage on pressing issues related to torture prevention.

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2. Diversify the SPT's "tool box" on torture prevention: for example conduct shorter in-country missions to States Parties to meet with governments and NPMs where this will have more impact.
  3. Visit a variety of places of deprivation of liberty, not exclusively focusing on "traditional" places, such as prisons.
  4. Reflect internally about what elements of its work need to be confidential and where it could develop creative ways of engaging with wider audiences (for example holding public meetings, encouraging states to make public commitments). Be prepared to take a public stand on issues.
  5. Work on developing the international *system* of prevention of torture envisaged by the OPCAT, so that the SPT and NPMs feel they are part of this system and benefit from contact and collaboration with each other, as well as direct contacts.
  6. Be innovative and apply its mandate in a way that leads to most effective prevention of torture (in the same way it developed the practice of unannounced visits to places of detention).
  7. Use its existing budget in creative ways to achieve maximum impact.
  8. Contribute to developing an operational definition of torture prevention, to facilitate shared understanding among actors of what it means in practice.
  9. Engage with a wider range of actors relevant for the prevention of torture, in particular civil society organisations at the national level (including through communication outside the context of official missions).

#### *To strengthen NPMs*

10. Engage more with NPMs including outside in-country missions, according to needs and impact.
11. Elaborate what key OPCAT requirements for NPMs mean in practice, for example "independence".
12. Take a position on compliance with OPCAT requirements and NPM quality work – either confidentially with the state or publically or both.
13. Consider conducting joint visits with NPMs to share knowledge and practice on detention monitoring.



### **Actions for National Preventive Mechanisms (NPMs):**

1. Seek to be leaders in torture prevention, going beyond visits, reports and recommendations to engage with a wide variety of relevant actors and influence policy and public debate on how to stop torture occurring.
2. Seek credibility through ensuring the expertise, commitment and objectivity of their staff.
3. Build public awareness of the NPM's work. Define a communication strategy in order to work with but not be instrumentalised by the media.
4. Build mutual confidence with the authorities, allowing for cooperation and constructive criticism while maintaining independence.
5. Exchange practices with other NPMs in order to mutually improve working methods, including through meetings, communications and staff placement arrangements.
6. Be innovative and apply their mandates in a way that leads to most effective prevention of torture.
7. Visit a variety of places of deprivation of liberty, not exclusively focusing on "traditional" places, such as prisons.
8. Exchange peer-to-peer experiences through NPM networks.

### **Actions for all detention monitoring bodies (NPMs, SPT, other international and regional bodies, NHRIs, NGOs):**

#### *To protect vulnerable groups*

1. Mainstream the issues of vulnerable groups into detention monitoring work. Compiling standards for monitoring vulnerable groups would help monitors in this role.
2. Consider including victims of torture, service users and persons formerly deprived of liberty in monitoring teams, as they can provide important first hand perspectives on systems, cultures and risk factors.
3. Keep sight of the individual: conduct private interviews, listen and provide space to persons deprived of their liberty.

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*To get recommendations implemented*

4. Draft clear, targeted, realistic, concrete, time-bound recommendations, which are based on credible facts, reference national and international standards and are prioritized.
5. Engage in budget analysis to make informed recommendations to the right institutions the time of budget setting.
6. Engage in continuous constructive dialogue with authorities on the basis of recommendations.
7. Employ strategies to obtain the mutual reinforcement of recommendations by bodies at the national, regional and international levels, including by visiting bodies, courts and human rights mechanisms.
8. Analyse the reasons for non-implementation of recommendations and base follow-up on these.

*To deal with resource limitations*

9. Funding can be sought from organisations not focusing exclusively on torture prevention but broader rule of law issues (for example, the world bank and development agencies).
10. Be creative – a lot can be done without funds if there is the will and commitment.

*To address resistance from authorities:*

11. Take informed and strategic decisions when faced with resistance or disengagement from the authorities, keeping in mind the possibility of opening up future avenues for cooperation, while ensuring the monitoring body is not used for window dressing.

**Actions for OPCAT supporters and campaigners** (civil society, NHRIs, regional and international bodies, the international community and donors etc, including the APT):

*To ensure successful OPCAT campaigns and advocacy:*

1. Seek broad coalitions, with civil society (including professional groups and trade unions), government, parliamentarians, former detainees etc. Involve more police unions and associations of victims of crime.
2. Start with ensuring political will to prevent torture.

3. Engage in political mapping to understand the position of decision makers. Find allies in government. Take resistance seriously and engage in dialogue to overcome it.
4. Provide clear and simple communication to dispel the common misconceptions about the OPCAT. Prepare targeted materials (for example, simple briefing notes on the OPCAT), use digital activism and the support of international NGOs.
5. Use the UN human rights system, e.g. lobby for OPCAT ratification as a pledge for Human Rights Council membership and acceptance of recommendations made during the Universal Periodic Review.
6. Engage with the general public to foster public opinion that torture is wrong and must be prevented at all costs. This includes addressing “uncomfortable” issues such as the rights of victims of crime and public calls for more security.
7. Engage regional actors and diplomatic community on the OPCAT.
8. Show the link between the OPCAT and the broader fight against torture, including the fight against impunity, for example conduct parallel campaigning (e.g. on anti-torture legislation) and collaborate with actors working on accountability and prosecutions.
9. Join forces with other OPCAT campaigners in the relevant region, to formulate regional strategies, learn from each others experiences and develop regional communities of practice (e.g. through regional meetings, networks and websites). Also seek to learn from experiences in different regions.

*To strengthen the OPCAT system and mechanisms:*

10. Promote the development of the international *system* of prevention of torture envisaged by the OPCAT, so the OPCAT mechanisms (SPT and NPMs) feel they are part of this system and benefit from contact and cooperation with each other.
11. Encourage and facilitate an exchange of practices between NPMs to improve their working methods – for example through networks, workshops or a database of NPM practices.
12. Conduct groundwork on a system for assessing the compliance of NPMs with the OPCAT and their quality of work – the first step is considering how and by whom it could best be set up and managed.

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13. Provide practical guidance to new NPMs on where they can seek funding, where necessary.
  14. For civil society organisations: seek to strengthen NPMs, for example by providing experts to take part in NPMs visits and technical advice, or by acting as monitors of NPM work.

#### **Actions for the international donor community:**

1. Use political leverage to promote the ratification and effective implementation of the OPCAT, as well as torture prevention more broadly.
2. Provide funding for torture prevention, including so that NPMs have sufficient resources to carry out their mandates effectively.
3. Better coordinate funding and political actions for torture prevention with other members of the international community.

#### **Actions for academia:**

1. Conduct research into the economic, social and political costs of not preventing torture.
2. Contribute to developing an operational definition of torture prevention, to facilitate shared understanding among actors of what it means in practice.
3. Conduct research into the most impactful torture prevention measures and mechanisms, as well as on assessment methods for prevention bodies such as NPMs.

#### **Actions for all actors working to prevent torture:**

1. Engage a wider variety of officials, organisations, experts, groups and individuals for the prevention of torture, including judges, lawyers, doctors and forensic experts, educators, teachers, professional associations (such as medical and bar associations) trade unions and the media, in particular at the national level.
2. Seek the perspective of torture survivors on how torture could be prevented from occurring.
3. Seek to understand and address the broader causes of torture: institutional, normative, political, cultural, social, structural.

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# Annexes

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# Annex I: Agenda

Thursday 10 November 2011	
8:00–9:00	<b>Registration</b>
9:00–9:10	<b>Welcome</b> Ms Martine Brunschwig Graf, President, APT and President of the Forum Ms Isabel Rochat, Minister, Department of Security, Police and Environment, Republic and Canton of Geneva
9:10–10:00	<b>Keynote speech</b> Mr Juan Méndez, UN Special Rapporteur on Torture, Argentina <b>Opening Address</b> Ambassador Peter Maurer, Secretary of State, Federal Department of Foreign Affairs, Switzerland Mr Abdou Diouf, Secretary General of the Francophonie
10:00–10:30	<b>Coffee Break</b>
10:30–12:30	<b>Five years of OPCAT: process and impact</b> Mr Bacre Ndiaye, Director, Human Rights Council and Special Procedures Division, OHCHR Mr Mark Thomson, Secretary General, APT <b>Response from the plenary</b> <i>English, French, Spanish and Russian</i>
12:30–14:00	<b>Lunch</b>

## Thursday 10 November 2011

14:00	<p><b>1. Ratification campaigns and implementation advocacy</b></p> <p><b>Moderator:</b> Ms Sylvie Bukhari-de Pontual, President, FIACAT, France</p> <p><b>Speaker 1:</b> Mr Ellecer Carlos, Advocacy Officer, Human Rights Commission, Philippines</p> <p><b>Speaker 2:</b> Mr Ulugbek Azimov, Legal Expert, Independent Human Rights Group, Kyrgyzstan</p> <p><b>Speaker 3:</b> Mr Seydi Gassama, Director, Amnesty International, Senegal</p> <p><b>Speaker 4:</b> Mr Ghassan Moukheiber, Parliamentarian, Lebanon</p> <p><b>Interactive debate</b> <i>English, French, Spanish and Russian</i></p>	<p><b>2. Particularities of the preventive approach</b></p> <p><b>Moderator:</b> Mr Walter Suntinger, Austrian Human Rights Advisory Board, Austria</p> <p><b>Speaker 1:</b> Mr Victor Rodriguez, Member, Subcommittee on Prevention of Torture, Costa Rica</p> <p><b>Speaker 2:</b> Mr Greg Price, Chief Inspector, Ombudsmen's Office, New Zealand</p> <p><b>Speaker 3:</b> Mr Edouard Delaplace, Adviser, Detention Unit, International Committee of the Red Cross</p> <p><b>Speaker 4:</b> Ms Dupe Atoki, Chairperson, African Commission on Human and Peoples' Rights, Nigeria</p> <p><b>Interactive debate</b> <i>English, French and Spanish</i></p>	<p><b>3. NPM's effectiveness: how to make it work?</b></p> <p><b>Moderator:</b> Mr Kerem Altiparmak, Professor, Human Rights Centre, Ankara University, Turkey</p> <p><b>Speaker 1:</b> Mr Jean-Marie Delarue, General Controller, NPM – General Controller for Places of Deprivation of Liberty, France</p> <p><b>Speaker 2:</b> Ms Isabel Mansur, Member, Local Preventive Mechanism from Rio de Janeiro, Brazil</p> <p><b>Speaker 3:</b> Ms Lauretta Lamptey, Chairperson, Commission on Human Rights and Administrative Justice, Ghana</p> <p><b>Interactive debate</b> <i>English, French and Spanish, Russian</i></p>	<p><b>4. Investing in torture prevention</b></p> <p><b>Moderator:</b> Ms Karen McKenzie, Acting Head – Human Rights Unit, Commonwealth Secretariat, United Kingdom</p> <p><b>Speaker 1:</b> Ms Roselyn Karugonjo, Director Monitoring and Inspections, Human Rights Commission, Uganda</p> <p><b>Speaker 2:</b> Mr Claude Wild, Head of Human Security, Department of Foreign Affairs, Switzerland</p> <p><b>Speaker 3:</b> Ms Odalis Najera, Member, NPM – National Commission for the Prevention of Torture, Honduras</p> <p><b>Interactive debate</b> <i>English, French and Spanish</i></p>
16:30	<b>Coffee break</b>			
17:00	<b>Wrap-up in French</b>	<b>Wrap-up in Russian</b>	<b>Wrap-up in English</b>	<b>Wrap-up in Spanish</b>
18:00–19:30	<b>Reception</b>			



## Friday 11 November 2011

9:00	<p><b>5. Getting recommendations implemented</b></p> <p><b>Moderator:</b> Ms Silvia Casale, former CPT and SPT Chairperson, United Kingdom</p> <p><b>Speaker 1:</b> Ms Jeehan Mahmood, Commissioner, Human Rights Commission, Maldives</p> <p><b>Speaker 2:</b> Mr Gnambi Garba Kodjo, Director of Penitentiary Services, Togo</p> <p><b>Speaker 3:</b> Mr Luciano Mariz Maia, Regional Prosecutor, Brazil</p> <p><b>Speaker 4:</b> Ms Yakin Ertürk, Member, European Committee for the Prevention of Torture, Turkey</p> <p><b>Interactive debate</b> <i>English, French, Spanish and Russian</i></p>	<p><b>6. Enhancing SPT's impact</b></p> <p><b>Moderator:</b> Ms Therese Rytter, Programme Manager and Legal Adviser, RCT, Denmark</p> <p><b>Speaker 1:</b> Ms Elina Steinerte, Research Associate, Human Rights Implementation Centre, Bristol</p> <p><b>Speaker 2:</b> Mr Wilder Taylor, Member, Subcommittee on Prevention of Torture, Uruguay</p> <p><b>Speaker 3:</b> Mr Nadim Houry, Senior Researcher, Human Rights Watch, Lebanon</p> <p><b>Speaker 4:</b> Ms Diana Vargas, Coordinator, Human Rights Department, Supreme Court of Justice, Paraguay</p> <p><b>Interactive debate</b> <i>English, French, Spanish</i></p>	<p><b>7. OPCAT as an innovative treaty or same as usual?</b></p> <p><b>Moderator:</b> Ms Mervat Rishmawi, Human Rights Consultant, Palestine</p> <p><b>Speaker 1:</b> Mr Matt Pollard, AI Legal Adviser and Researcher, Essex University, United Kingdom</p> <p><b>Speaker 2:</b> Ms Elizabeth Odio Benito, former Chairperson, OPCAT Drafting Group, Costa Rica</p> <p><b>Speaker 3:</b> Mr Mahamane Cissé-Gouro, Regional Representative, OHCHR Regional Office, Senegal</p> <p><b>Speaker 4:</b> Ms Aya Kuwayama, Researcher, Centre for Prisoners Rights, Japan</p> <p><b>Interactive debate</b> <i>English, Spanish, French</i></p>	<p><b>8. Achieving a more inclusive strategy on torture prevention</b></p> <p><b>Moderator:</b> Ms Martine Anstett, Head of Division, International Organisation of La Francophonie, France</p> <p><b>Speaker 1:</b> Mr Juan Méndez, UN Special Rapporteur on Torture, Argentina</p> <p><b>Speaker 2:</b> Ms Suzanne Soukoudé, Magistrate, Appeal Court, Togo</p> <p><b>Speaker 3:</b> Mr Oliver Lewis, Director, Mental Disability Advocacy Centre</p> <p><b>Speaker 4:</b> Ms Alice Edwards, Senior Legal Coordinator, UNCHR</p> <p><b>Interactive debate</b> <i>English, French, Spanish and Russian</i></p>
11:30	<b>Coffee break</b>			
12:00	<p><b>Rapporteur Session 5:</b> Mr Gerald Staberock, Secretary General, OMCT</p>	<p><b>Rapporteur Session 6:</b> Ms Andrea Huber, Policy Director, Penal Reform International</p>	<p><b>Rapporteur Session 7:</b> Mr Koffi Ateade, Legal Officer, ICTR</p>	<p><b>Rapporteur Session 8:</b> Mr Phil Lynch, Executive Director, Human Rights Law Resource Centre</p>
13:00	<b>Lunch</b>			

Friday 11 November 2011					
14:15	<b>AFRICA</b> <b>Moderator:</b> Mr Jean-Baptiste Niyizurugero, Africa Programme Officer, APT <b>Rapporteur:</b> Ms Ilaria Paolazzi, Africa Programme Adviser, APT <i>English and French</i>	<b>MIDDLE EAST AND NORTH AFRICA</b> <b>Moderator:</b> Ms Esther Schaufelberger, MENA Programme Officer, APT <b>Rapporteur:</b> Mr Matthew Sands, Legal Adviser, APT <i>English and French</i>	<b>AMERICAS</b> <b>Moderator:</b> Ms Sylvia Dias, Director, APT Office for Latin America <b>Rapporteur:</b> Ms Isabelle Heyer, Americas Programme Officer, APT <i>English and Spanish</i>	<b>ASIA AND PACIFIC</b> <b>Moderator:</b> Mr Vincent Ploton, Institutional Development Officer, APT <b>Rapporteur:</b> Ms Tanya Norton, Detention Monitoring Programme, APT <i>English</i>	<b>EUROPE AND CENTRAL ASIA</b> <b>Moderator:</b> Mr Matthew Pringle, Europe and Central Asia Programme Officer, APT <b>Rapporteur:</b> Mr Jean-Sébastien Blanc, Detention Monitoring Programme Adviser, APT <i>English and Russian</i>
16:15	<b>Coffee break</b>				
16:45–17:30	<b>Wrap-up of the regional roundtables</b> Ms Barbara Bernath, Chief of Operations, APT <b>Closing ceremony</b> Mr Malcolm Evans, Chairperson, UN Subcommittee on Prevention of Torture Ms Elizabeth Odio Benito, former Chairperson, OPCAT Drafting Group, Costa Rica Ms Martine Brunschwig Graf, President, APT <i>English, French, Spanish and Russian</i>				

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## Annex III: General Background Paper

### OPCAT Achievements and Challenges

*APT Global Forum on the OPCAT, 10–11 November 2011, Geneva*

#### **Five year review of the OPCAT: Achievements and challenges in prevention of torture**

The Global Forum on the Optional Protocol to the Convention against Torture (OPCAT) aims to assess the impact of the treaty since it came into force in June 2006 and share ideas to ensure its effective implementation.

#### **Achievements**

##### *1. Half of the world supports the torture prevention system*

Five years after coming into force, almost 100 countries are connected to the OPCAT: 61 States have ratified the treaty, 22 are signatories and a dozen more have expressed their interest in signing. The majority of States Parties are from Europe and Central Asia, while the Asia-Pacific region and the Middle East and North Africa remain underrepresented.

##### *2. The Subcommittee on Prevention of Torture is operating at full strength*

The first ten members of the Subcommittee on Prevention of Torture (SPT) were elected a few months after the OPCAT entered into force. Since then, the SPT has developed its methods of work and carried out 13 country visits. In 2009, when the 50th State Party ratified the treaty, the SPT grew from 10 to 25 members and now has a broader representation of regions, gender and expertise. It has published four annual reports.

##### *3. National monitoring bodies are being established*

A State Party is required to establish an independent national monitoring mechanism – known as a National Preventive Mechanism (NPM) – responsible for inspecting places of detention within one year of ratifying the OPCAT. Of the current 61 States Parties, 37 have designated a NPM and others are making strong progress towards this goal. The majority of NPMs have

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been established following a thorough analysis of the national situation and consultation with key stakeholders, giving them greater potential for genuine impact on the ground.

#### *4. Positive changes are taking place*

The OPCAT seeks to establish a process of ongoing dialogue and collaboration between all groups involved in the prevention of torture and ill-treatment of people deprived of their liberty. There is evidence that this is happening in practice, with most States engaging in broad consultation to determine the most suitable NPM for their national setting. In addition, few NPMs report significant difficulties in their relationships with governments.

The OPCAT has led to greater transparency in places of detention. Recommendations made by the SPT and NPMs following their inspections of places of detention are contributing to practical improvements, including:

- **changes to laws and regulations**, such as length of pre-trial detention
- **changes within institutions**, such as providing human rights training to detaining authorities
- **changes in the conditions of places of detention**, including the closure of some facilities.

There has also been a genuine willingness among all stakeholders to share views and experiences at the international, regional and national level.

#### *5. More groups are working in more places to prevent torture*

A growing number of actors are now working actively on the prevention of torture and ill-treatment:

- at the **international level**, such as UN mechanisms (the Committee against Torture, the Special Rapporteur on Torture and the Subcommittee on Prevention of Torture) and international civil society organisations, including members of the OPCAT Contact Group
- at the **regional level**, such as the Committee for the Prevention of Torture in Africa, the Rapporteur on the Rights of Persons Deprived of their Liberty of the Inter-American Commission on Human Rights and the European Committee on Prevention of Torture

- at the **national level**, such as governmental officials, national human rights institutions, NGOs, academics and in some cases, judges, parliamentarians and media.

However, with more people working in the area, clear and ongoing communication is necessary to ensure that the work of international, regional and national bodies is coordinated and effective.

#### *6. The debate on torture and ill-treatment has been reinvigorated*

In many countries, national consultations about the establishment of NPMs have helped stimulate a broader discussion about the fight against torture and ill-treatment. In some cases, this discussion has resulted in positive legislative and policy reform, such laws that specifically make torture a crime.

### **Challenges**

#### *1. NPMs can face challenges to their effectiveness*

Some NPMs can face serious obstacles in properly carrying out their mandate to inspect places of detention and prevent torture and ill-treatment, including:

- **independence**; for example, approximately a third of NPMs have not been designated by law, which seriously compromises their independence and effectiveness
- **composition and resources**; experience shows that all institutions, whether new or existing, will require human, financial and logistical resources when they are given a new mandate, especially one that requires specific skills and expertise
- **guarantees and powers**; specifically the need to ensure immunity for all NPM members and staff and protection from reprisals
- **working methods**; for example, being able to deal with individual complaints of torture or ill-treatment and ensuring that monitoring and reporting focuses on all aspects of the detention system.

#### *2. Awareness and attitudes can hinder change*

In some regions and some countries, there is still limited awareness and understanding of the OPCAT and methods of torture prevention. For example, the SPT has reported that it can face obstacles when visiting places of

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detention, partly due to a lack of awareness about its mandate by the authorities running individual facilities.

In some countries, there is confusion and wariness about the SPT's mandate and its methods of work. This can be an obstacle towards ratification. In addition, an understanding of what constitutes torture and ill-treatment is often taken for granted by those working in the area. However, in some countries, understanding of the obligations and provisions of the Convention against Torture is still limited, which significantly hinders torture prevention efforts.

### *3. Disengagement by government authorities*

In some settings there has been a degree of disengagement by government authorities once the NPM has been established, based on the assumption that this fulfils their obligations under the OPCAT. In fact, establishing a NPM should represent the beginning of an ongoing process of dialogue and cooperation to identify and respond to those areas where there is risk of torture and ill-treatment in places of detention.

### **Measuring our impact**

After five years of the OPCAT coming into force, it is important to have a focused discussion about the impact of mechanisms and activities to prevent torture. Several questions need to be considered: What exactly do we mean when we talk about the 'impact' of torture prevention? How do we measure it? Why is it important to know whether the system is working and producing results? What kind of results do we expect to achieve? It is anticipated that these questions will be integrated across all thematic sessions and the regional roundtables at the Global Forum.

## Annex IV: Selected Background Readings

The following are some suggested background readings on the OPCAT and the prevention of torture. Further suggestions for readings are also made at the end of each thematic section of this report.

- Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, UN. Doc A/RES/57/199 (18 December 2002)
- African Commission on Human and Peoples' Rights, Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman and Degrading Treatment or Punishment in Africa, "*The Robben Island Guidelines*" (October 2002)
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT/Inf/C (2002) 1 [EN] (Part 1) – Strasbourg, 26.XI.1987
- Principles relating to the Status of National Institutions (The Paris Principles), UN.Doc A/RES/48/134 (20 December 1993)
- APT, *The OPCAT: Frequently Asked Questions*
- APT/IIHR, *Optional Protocol to the UN Convention against Torture, Implementation Manual* (revised edition 2010)
- APT, *Torture in International Law – A Guide to Jurisprudence* (2008)
- Amnesty International, *Combating torture, a manual for action* (2003)
- APT, *Defusing the ticking bomb scenario* (2007)
- APT, *Guide to the Establishment and Designation of National Preventive Mechanisms* (2006)
- APT, *Monitoring Places of Detention: A Practical Guide* (2004)
- REDRESS, *Bringing the International Prohibition of Torture Home* (2006)
- Murray, Rachel, Elina Steinerte, Malcolm Evans, and Antenor Hallo de Wolf, *The Optional Protocol to the UN Convention Against Torture*; Oxford University Press (September 2011)

Five years after the Optional Protocol to the UN Convention against Torture (OPCAT) came into force, the Association for the Prevention of Torture (APT) convened the Global Forum on the OPCAT: *Preventing Torture, Upholding Dignity: from Pledges to Actions*, on 10 and 11 November 2011 in Geneva. This event brought together an unprecedented group of over 300 experts, implementers and practitioners in the prevention of torture from around the world, to take stock of the OPCAT's novel system for preventing torture thus far and identify concrete ways it can be strengthened.

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