



The Optional Protocol to the United Nations Convention against Torture: An Opportunity for Refugee and Migrant Rights Protection¹

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Introduction

The detention of refugees, asylum seekers, undocumented migrants, stateless persons and other migrants represents an ongoing challenge for human rights worldwide. Whether detained under national criminal laws, administrative laws or other dispositions, they are particularly vulnerable to ill-treatment, exploitation and deprivation of liberty in inadequate and possibly inhuman conditions. This can have serious and long-lasting consequences for their physical and mental well-being as well as a range of rights from physical integrity and judicial protection to education and health. It can also impact on their access to asylum procedures and heighten the risk of refoulement.

An innovative international treaty, the Optional Protocol to the United Nations Convention against Torture (OPCAT), creates a system which represents an important opportunity for actors who work for the protection of the rights of refugees and migrants in detention.

What is the OPCAT?

Torture and other cruel, inhuman or degrading treatment or punishment (TCIDT) usually occurs in institutions that are closed to public scrutiny. The experience of international and national organisations has shown that detention monitoring is an effective way to create transparency in such institutions and identify problems that were previously ignored. Monitoring not only sheds light on conditions and treatment in detention but can be instrumental in pressuring and assisting the authorities to address and improve them.

The OPCAT was adopted by the United Nations in 2002 and came into force in 2006. It aims to give States that have ratified the UN Convention against Torture a practical means by which to fulfil their existing obligations to prevent TCIDT. It creates a dual system of regular visits to places of detention in State Party jurisdictions composed of an international Sub-Committee on the Prevention of Torture (SPT), and one or several independent national institutions called National Preventive Mechanisms (NPMs). This dual system aims to serve as the basis for constructive dialogue with the authorities on improving conditions and treatment in detention. Currently, there are forty-seven State Parties to the OPCAT, twenty-four signatories and numerous other countries working toward ratification. Among the present State Parties, twenty-four have designated or created their NPM.²

The SPT is made up of ten international experts, the number of whom will increase to twenty-five when there are fifty OPCAT ratifications. It conducts visits to places of detention in State Party jurisdictions and engages in dialogue with States in order to enhance the prevention of torture. It is also mandated to advise and assist NPMs. An SPT report following an in-country visit is initially confidential but may be made public if the State Party in question so

¹ This paper is an *introductory* briefing for human rights defenders who work with migrants, refugees and asylum seekers who have been deprived of their liberty. For more detailed information on the OPCAT, please see the APT website.

² See <http://www.appt.ch/content/view/40/82/lang,en/> for a complete list of State Parties and Signatories, and <http://www.appt.ch/content/view/138/152/lang,en/> for a list of NPMs designated to date.

requests or itself publishes the report in full or in part. The SPT also presents a public annual report on its activities to the Committee against Torture. To date, the SPT has visited Mauritius, Maldives, Sweden, Benin, Mexico and Paraguay.

Under the OPCAT, NPMs are independent single or several institutions specifically created or designated by State Parties in accordance with the 1993 UN Paris Principles relating to the status and functioning of national human rights institutions. NPMs do not replicate existing mechanisms that investigate individual cases of torture in detention. Instead, they are mandated to carry out systematic visits to places of detention in order to analyse the treatment, conditions and administration therein. This is done with the aim of engaging the respective Government to identify and implement systemic measures to mitigate the risks of TCIDT and improve conditions generally. NPMs enjoy full powers of access to relevant installations, persons and information.

Given the broad definitions of places of detention and deprivation of liberty contained in OPCAT article 4, NPMs and the SPT have the power to visit installations specifically designed to hold refugees and migrants, including airport holding centres, camps and specialist migrant detention centres, as well as other places where migrants may be held, including prisons, police cells, military installations, psychiatric institutions and care homes.

What Role for Refugee and Migrant Rights Defenders?

Refugee and migrant rights defenders have a variety of roles to play with regard to the OPCAT, depending on their particular national context. They can join in national dialogue and lobbying for ratification of the OPCAT by highlighting the need to have independent mechanism(s) that specifically monitor the situation of these groups in detention and promoting the OPCAT as a practical means to this end. They can join the debate on what form the NPM should take. Upon ratification, they can also contribute to the process of implementing the OPCAT by engaging the NPM to address specifically the issue of refugees and migrants in detention in addition to more 'traditional' situations of deprivation of liberty.

The OPCAT establishes the need for NPMs to have the adequate capabilities and professional knowledge to carry out its functions. The refugee and migrant sectors should work to ensure that the NPM in each State Party is equipped with the necessary skill set in terms of membership and personnel. Finally, the refugee and migrant sector can nourish the NPM with up-to-date information, analysis and advice including by contributing to the development of migrant-specific tools and criteria to be used in monitoring and analysis.

In the case of countries which may not yet ratify the OPCAT, public debate around the need and obligation to monitor places of detention based on the OPCAT model should be generated and the migrant sector has specific experience to contribute. Promoting transparency in places of detention is in itself an essential step toward ensuring the rights of refugees and migrants.

The OPCAT represents an important opportunity for refugee and migrant rights actors and the broader human rights sector at both the national and international levels. The engagement of the refugee and migrant rights defenders will be critical in optimizing its potential.

The APT is an international NGO based in Geneva that works with Governments, independent national institutions and civil society organizations for the prevention of torture worldwide. For more information about the work of APT, the OPCAT or detention monitoring, please visit the APT website.