association for the prevention of torture

The Middle East and North Africa
A Torture Free Zone

Issue 05

Winter 2013

The front line of prevention

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Mark Thomson
APT Secretary General

This winter issue of the Middle-East and North Africa - MENA electronic bulletin is dedicated to preventive monitoring of places of detention. What we didn't know at the planning stage of this bulletin was that, by the time of publishing it, we would have seen the creation of the first National Preventive Mechanisms under the OPCAT in the MENA region.

On 9 October 2013, the National Constituent Assembly of Tunisia passed the law to establish a body of 16 independent members. We would like to extend our congratulations not only to the government of Tunisia, but to all those who tirelessly have supported the process of drafting and adopting this law.

Why is the creation of a torture prevention body in Tunisia such an important step for the MENA region? Malcolm Evans, Chair of the UN Subcommittee for Prevention of Torture, provides an answer to this question in his opinion piece: "We have come to realise that the front line of prevention is not in Geneva, nor is it the SPT: it is in the country itself, and it is the NPM". Most importantly, he writes, is that the NPM is truly independent and that it has the necessary resources and experience to undertake its functions "fairly and fearlessly".

As Professor Evans points out, there is relatively little practice concerning NPMs in the MENA region. The MENA Regional Forum for Monitoring of Places of Detention and Prevention of Torture is therefore a welcome initiative, bringing together civil society organisations from nine countries of the region to support independent monitoring of places of detention. You can read more about the Forum and about the role of National Preventive Mechanisms is this MENA Electronic Bulletin on prevention of torture.

Introduction

Monitoring places of detention can save lives and ensure dignity and security!

Mervat Rishmawi
Human Rights Consultant

All of us who work in the human rights field know the importance of preventing violations before they happen. Many of us who have visited places of detention, or who have worked on detention issues realise the importance of monitoring places

of detention in order to prevent violations, identify violations as early as possible after they happen, and seek redress for such violations. Monitoring places of detention can also have an essential role in identifying recommendations for changes in laws, policies and practices in order to bring them in line with international standards. These are essential to ensure human rights and dignity for those deprived of their liberty.

Monitoring places of detention takes many forms: it is most often carried out through visits to such places. Sometimes, monitoring a place of detention needs to happen even after it is freed from prisoners. This is for example what is happening now in Libya and what will need to happen later in Syria. This allows us to understand what happened in these places of detention and ensure that it will never happen again.

Visits are of different types. They can be in-depth visits which are usually last days and involve a large multidisciplinary team; ad hoc visits which usually short, unannounced visits to one particular place, with a small team; and thematic visits which are usually focused visits to a number of places. Generally they involve a specialised team. Regular and unannounced visits to places of detention are one of the most effective ways to prevent torture and other forms of ill-treatment in all places of detention.

The following four points can help in carrying out visits:

1. **Preparation of the visit**: before the visit, it will be essential to compile and analyse available information from previous visits and available resources; have clear specific objectives of the visit; and organise the work of the visiting team including preparing forms or questionnaires to be used, defining tasks and responsibilities and taking care of the logistics.

2. **On-site objective and professional documentation:** it is essential to ensure that documentation of the visit is professional and objective. This includes ensuring to take the point of view of various parties, including the persons deprived of their liberty; the authorities including those responsible for the detention facility; other available sources of information including lawyers, doctors and families; and finally observations of the visiting team.

3. **Analysis:** After the visit, all information from the visit needs to be compiled and analysed in relation to national and international standards. It is important to be mindful that national standards are sometimes not consistent with international standards, or that if they are, sometimes they are not being respected. Identifying whether the problem is in law or practice or both is an important element for the next step: recommendations and follow up.

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4. **Formulation of recommendations and follow-up:** The monitors' analysis will be used to formulate more substantial and pragmatic recommendations, rather than simply pointing out the problems or incompatibilities with international standards. It is important to ensure a speedy follow up on cases that require urgent intervention, for example those relating to medical treatment or those of people who have been in isolation from the outside world. The report and recommendations should be completed shortly after the visit and must be submitted to the person in charge of the place of detention and if relevant to higher authorities.

Therefore, monitoring visits are clearly not an end in themselves but rather the first step in a long-term process of improving the treatment of detainees and conditions of detention through cooperative dialogue with the authorities. For visits to have the intended preventive effect it is important that those conducting visits respect certain basic principles and ethical standards. The following is a very brief summary of these common standards.

For more information on this, click here for more APT information and materials.

1. **Do no harm:** Detainees are particularly vulnerable and their safety should always be kept in mind by visitors.

2. **Exercise good judgment:** Monitors should be aware of the standards and rules against which they are conducting their monitoring. However, whatever their number, relevance and precision, rules cannot substitute for good personal judgment and common sense.

3. **Respect the authorities and the staff in charge:** Respect must be established between the staff and the visiting team, otherwise the work in the places of detention might be jeopardised. Visitors should always respect the functioning of the authorities and try to identify the hierarchy and responsibilities to address any problem at the right level.

4. **Respect the persons deprived of liberty:** Whatever the reasons for deprivation of liberty, detainees must be treated with respect and courtesy. The visitor should introduce him or herself without prejudice to the background or status of the person deprived of their liberty.

5. **Be credible:** Visitors should explain clearly, to detainees and staff, the objectives and the limitations of their monitoring work and behave accordingly. They should make no promise that they are unlikely or unable to keep and not take any action that they cannot follow through.

6. **Respect confidentiality:** Respect for the confidentiality of the information provided in private interviews is essential. Visitors should not make any representation using the name of a detainee without his or her express and informed consent.

7. **Respect security:** Security refers to the personal security of visitors, the security of the detainees who are in contact with them and the security of the place of detention. It is important to respect the internal rules of the places visited and to seek advice or request any special dispensation from those in charge.

8. **Be consistent, persistent and patient:** The legitimacy of the visiting mechanism is established over time, as a result of the relevance, persistence and consistency of its work. Monitoring places of detention requires efficiency, regularity and continuity. It implies visiting regularly the same places and building up enough evidence to draw well founded conclusions and make recommendations. It is essential to be persistent also in the follow-up activities.

9. **Be accurate and precise:** During the visit it is important to collect sound and precise information in order to be able to draft well-documented reports and relevant recommendations.

10. **Be sensitive:** Particularly when interviewing detainees, visitors should be sensitive to the situation, mood and needs of the individual, as well as to the need to take the necessary steps to protect his or her security. In cases of allegations of torture and ill-treatment, visitors should be aware of the possibility of re-traumatisation.

11. **Be objective:** Visitors must strive to record actual facts and to deal with both staff and prisoners in a manner that is not coloured by feelings or preconceived opinions.

12. **Behave with integrity:** Visitors should treat all detainees, authorities and staff, and their fellow visitors with decency and respect.

13. **Be visible:** Within the place of detention, visitors should make sure that staff and detainees are aware of the methodology and mandate of the visiting body, that they know how to approach them. Visitors should wear means of identification. Outside the place of detention, the work of visiting mechanisms should be publicised through written reports and careful use of the media.

More information on detention monitoring can be found on APT's website (please click here).

1. Opinion Pieces

Monitoring places of detention in the MENA region – The significance of OPCAT

Malcolm D Evans
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Chair, UN Subcommittee for Prevention of Torture

Readers of the MENA electronic Bulletin will surely need no introduction to the OPCAT, the Optional Protocol to the UN Convention against Torture. Having taken 25 years to draft, the OPCAT entered into force in 2006 and there are now 69 States Parties worldwide. It has to be said that participation of states in the MENA region is not as great as one might wish, with there being currently only three States Parties from the region: Lebanon, Tunisia and Mauritania. Nevertheless, this 'headcount' of states significantly underestimates the importance of the OPCAT, and the mechanisms which it established, to the region. At the international level, OPCAT establishes the UN 'Subcommittee for Prevention of Torture (SPT)' – which, despite its name, is not a subcommittee at all, and, with 25 members, is in fact the largest of ten treaty bodies established by the various UN human rights treaties. The SPT is unique within the UN human rights system in having the mandate to visit any place of detention in any state party whenever it chooses to do so, in order to determine for itself at first hand the situation of those deprived of their liberty, and to make confidential recommendations to the authorities and to have dialogue with them over their implementation. So far, the SPT has visited only one country in the MENA region – Lebanon, in 2010 – and the report and dialogue arising from that visit currently remains confidential.

If this were all the OPCAT provided for, it would be providing a very great deal. However, in addition, the OPCAT requires all States Parties to establish, within one year of becoming a party to OPCAT, a 'National Preventive Mechanism' (NPM), which is a wholly independent domestic body, which is also to have the same powers to visit any place where it believes persons may be deprived of their liberty within the jurisdiction of the state, have access to all relevant information and records, and to make recommendations as a result of the visits. There are other things which the NPM must also be able to do – including commenting on relevant existing and draft legislation and keeping in contact with the SPT. This last point is worth highlighting. The NPM established under OPCAT has to be functionally independent. It also has to be able to communicate and meet with the SPT. As a result of this, it is not only required by the international system, but it becomes, in effect, a part of the international system of preventing torture and ill-treatment in places of detention. The SPT really does stay in close contact with the NPMs which have been established, and tries to visit them whenever possible, both formally and informally. Indeed, the SPT has recently established the practice of undertaking 'NPM Advisory Visits', in which it focuses on meeting NPMs and learning more about how they undertake their own visiting work. We frequently invite NPMs to our sessions in Geneva and discuss their work and practice with them in more detail, to learn more about the challenges they face, and how we, the SPT, might be able to help them. Why?

The answer is quite simple. We have come to realise that the 'front line' of prevention is not in Geneva, nor is it the SPT: it is in the country itself, and it is the NPM. They are the ones who are based in the country itself and are able to visit and return to places of detention on a frequent basis. We – who must be concerned with nearly 70 countries – cannot possibly do so ourselves. But by working closely with the NPMs, we can be close to the routine monitoring of places of detention in all states parties, and by working with them we can, together, support each other and be so very much more effective than we could be were we to be acting alone.

Of course, this can only work if, as the OPCAT requires, the NPM is truly 'independent' and has the necessary resources and experience, to be able to undertake its functions fully, fairly and fearlessly. Our role as the SPT is to ensure that this is the case. Indeed, the OPCAT places an obligation on the SPT to work with States Parties, advising and assisting them as they establish their NPMs. Nearly 50 NPMs have now been established worldwide and so the SPT has acquired a great deal of experience in how to do this effectively.

One of the great strengths of the OPCAT is that it does not set out a single 'model' for the NPM. Every country, and every legal system, is different and so it is entirely right that each NPM may be rather different from those found elsewhere. What matters is not 'how' it is structured, but whether it is independent, whether it has a sufficiently broad mandate, whether it has the resources to be able to do its job and – something which is perhaps not stressed enough – whether it is actually listened to and taken seriously by the authorities in the State concerned.

There is, as yet, relatively little practice concerning NPMs in the MENA region. Only Tunisia has formally established an NPM, and that only in September of this year. However, there has been a great deal of discussion

about NPMs, what they are to be able to do and who might be members of them in numerous states across the region, both in States Parties and other countries. Extensive discussions have taken place in other states – including Algeria, Lebanon, Mauritania, Morocco - about what might be expected of an NPM under the OPCAT. In addition, in September 2013 Bahrain established by Royal Decree a new Prisoner's and Detainee's Rights Commission, the preamble to which expressly recalls the terms of the OPCAT. As this shows, OPCAT is a source of inspiration for, and a source of information on, the establishment of monitoring and preventive mechanisms in all states – not just in States Parties.

It is, then, clear that the relevance of establishing independent mechanisms for visiting places of detention is well understood in many states within the MENA region, and that the importance of doing so in a manner which is compatible with the OPCAT is also widely appreciated. It is, then, important for all states in the region to ensure that they not only have independent systems for monitoring places of detention, but that those systems reflect the basic principles of the OPCAT system.

In order to help with this, bodies such as the APT have produced extremely valuable guides and handbooks. The SPT has itself tried to assist States, NPMs and civil society by producing Guidelines on National Preventive Mechanisms (CAT/OP/12/5 (2010)) and an 'Analytical self-Assessment Tool' for NPMs (CAT/OP/1 (2012)). There is, however, no substitute for face to face discussions, and the SPT has found it most useful to be able to meet with civil society and with those responsible for developing and establishing NPMs early on, in order to help inform them of its expectations for the mechanism, allowing them to ensure that it is established in accordance with an inclusive and transparent process, which then provides a strong foundation for its future work. Experience has shown there to be a number of difficulties which frequently arise in practice. In the remainder of this comment, I will highlight a few of these.

(a) What is a place of detention?

The entire point of the OPCAT system is to ensure that torture and ill-treatment is made less likely as a result of preventive visits to places where persons may be being deprived of their liberty by the public authorities, or with their consent or acquiescence. It is, then, important to realise that it is not only about visits to prisons or police stations, vital though these are. The list of possible places where people might be detained is – literally – endless. Many may be 'official' places; others might be unofficial places. The NPM (or SPT) might think people are being detained by public officials in basements of office blocks, factories or bunkers in underground locations; in transit vans, trains, aircraft or flagged vessels at sea! The NPM should have the authority to visit ANY place where it suspects people might be detained by public authorities. This may include hospitals, social care homes, orphanages, military facilities, airports, seaports, immigration detention centres, border stations, and so on, depending on the legislation and practice of the country concerned. Many states try – many wanting to be helpful – to set out lists of places which fall within the mandate of the visiting body. Such lists can be useful as a reminder of the breadth of possible places of detention, but they should not be 'prescriptive'. It is easy to defeat preventive monitoring of places of detention if there is a list which is drawn up restrictively. General language, as found in the OPCAT, is best: 'places where people are deprived of their liberty'.

(b) Who is a detainee?

The SPT is clear on this: a detainee is any person who is 'not free to leave'. If you cannot 'just walk out or walk away' from the place or official when you wish to do so, then you are being detained for the purposes of the OPCAT. Sometimes it has been argued that only those formally detained by a court order, after an appearance in court, are formally detained: or only those who have been formally arrested, etc. This is not right. This would exclude a large number of people who are at any given moment under the power of detaining authorities and are in a position of potential vulnerability.

(c) When may visits take place?

To be effective, visiting mechanisms must be able to carry out both announced and unannounced visit at any time – day or night, weekday or weekend, workday or public holiday. After all, places of detention never close! Those in charge of such places need to know that such visits can happen – so that they know to allow the monitors in – but they ought not to know when they are going to

happen. If access is ever delayed, this must be reported.

(d) Who is to undertake the visits?

The visits are, of course, to be undertaken by the members or staff of the NPM – who are to be independent of the institutions visited and of the state itself. In some countries, the members of the NPM form a team (a little like the SPT) who undertake the visits in person. In other countries the NPM is an institution – such as a National Human Rights Commission or an Ombudsman's Office – and it is then the professional staff of that body – which must itself be fully independent - which undertake the visits and produce the reports on its behalf. There are many models, but the core element is the same: the members of the NPM and those who undertake the visits should be completely independent of the detaining authorities. Obviously, those who are employed by the State to operate or administer places of detention cannot be members of the NPM; nor should serving judges, prosecutors and others involved in the administration of justice. In many countries, such figures have valuable roles as visitors in their own right, overseeing the execution of sentences. This, however, should be in addition to the NPM, and not instead of it, or as a part of it.

This ought to be clear enough (though this is not always the case). However, it is also important that those involved in preventive monitoring of places of detention have prevention as their primary focus. They are NOT a complaints mechanism, and are not investigating specific allegations or complaints. Nor are they checking up on the general working of a custodial system (i.e. institutional auditors). It is also important that those visiting have a broad range of expertise relevant to their role – so medical doctors, lawyers, psychologists, psychiatrists, accountants, religious figures and many other forms of professional expertise or practical experience (including former detainees) may all have valuable insights. Gender, ethnicity and minority representation are also important factors – but above all those involved in monitoring must be able to effectively engage with all those who they find in a custodial setting – including detention staff as well as detainees. The ability to inspire the trust and to respect the confidence of all those who they meet and whom they engage in the course of their work is perhaps the overarching requirement of an effective monitor.

Detention monitoring under the OPCAT has the clear and precise focus on the treatment of persons deprived of their liberty and all that might have a bearing upon this. In the words of the SPT, 'there is more to the prevention of torture and ill-treatment than compliance with legal commitments. In this sense, the prevention of torture and ill-treatment embraces – or should embrace – as many as possible of those things which in a given situation can contribute towards the lessening of the likelihood or risk of torture or ill-treatment occurring. Such an approach requires not only that there be compliance with relevant international obligations and standards in both form and substance but that attention also be paid to the whole range of other factors relevant to the experience and treatment of persons deprived of their liberty and which by their very nature will be context specific' ('The Approach to the Concept of Prevention', CAT/OP/12/6 (2010) please click here).

Detention monitoring under the OPCAT is, at one level, complex and demanding. At another, it is also extremely straightforward and there is a risk in making it seem more daunting than it is. What is really required of all involved is a willingness to be open, honest and realistic: common sense also takes you a very long way. Yet not everyone believes themselves free to speak openly, honestly and realistically about the reality of detention – and OPCAT is designed to help everyone feel their way towards becoming so.

Membership of National Preventive Mechanisms – standards and experiences


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The National Constituent Assembly of Tunisia passed the law to establish the National Authority for the Prevention of Torture on 9 October 2013. By this, Tunisia is enacting the legal basis for the National Preventive Mechanism (NPM) required under the Optional Protocol to the UN Convention against Torture (OPCAT), the first of its kind in the Middle East and North Africa. International and Tunisian NGOs welcomed this adoption and called upon the Tunisian parliament to appoint independent and qualified experts to this new body.[1]

According to the law, which has not yet been published at the date of writing this article, the National Authority will be composed of 16 independent members. Six of the members will come from civil society; two will be university professors, one a child protection specialist,

1 « L›Adoption de la loi tunisienne créant le MNP donne l'espoir dans un avenir sans torture », joint press release by 17 NGOs; « Landmark opportunity to combat torture", Human Rights Watch, 14.10.2013 ; « Déprivation de liberté n'est pas déprivation de droits », Ligue tunisienne des droits de l'homme, 21.10.2013.

two lawyers, three medical doctors and two retired judges. They will be appointed by the legislative power (either the Constitutional Assembly or the next parliament). For the lawyers and medical doctors there will be a pre-selection by their professional association.

What does a prevention mechanism do?

NPMs are mandated to conduct regular visit to all types of places where persons are deprived of liberty. They must also have the power to access all places of detention, without restriction, to access all information and to be able to talk with detained persons in private. Their visits should lead to reports and concrete recommendations to improve the protection of persons deprived of liberty. NPMs can also make comments on laws and regulations and propose reforms

- What kind of skills and profile do candidates for membership in such NPMs need?
- What else do nominating and appointing authorities need to take into consideration when proposing candidates?

The OPCAT provides a series of standards. In addition to this, we can also draw some preliminary lessons from existing NPMs and monitoring bodies in other parts of the world.

These considerations are also important for the appointment of members to other independent detention monitoring bodies, like Bahrain's Prisoner's Rights Commission, which was created by Royal Decree on 3 September 2013. This is composed of 11 members with the mandate to conduct preventive visits to places of deprivation of liberty. The members have not been appointed yet either. The APT has called upon Bahrain to appoint independent and qualified members to this commission[2]. Bahrain is not a State Party to the OPCAT, but took inspiration from the OPCAT when creating this new commission.

1. OPCAT standards

Preventive monitoring is a specialised task that requires personal dedication and specific skills: preventive mechanisms can only be effective if they are composed of persons who combine both dedication to the cause and the required skills to conduct the monitoring. NPMs are generally composed of two or three categories of persons: the members of the NPM, the staff of the NPM and (sometimes) external experts. Members are the persons officially appointed to the institution, whereas the staff is employed by members to support their work. Some NPMs can further call on external experts for specific tasks such as visits to special types of places of detention.

Independence

First of all, members, staff and experts of an NPM need to be personally and institutionally independent from State authorities. The OPCAT requires that the State Parties guarantees the functional independence of the institution as a whole and ensures that the institution is composed of independent personnel (OPCAT, Article 18.1). In practice, independence means that the NPM must be capable of acting without interference from state authorities. This includes obviously not tolerating interference from authorities responsible for prisons, police stations and other places of detention, nor from the government and the civil administration. They equally must not tolerate interference by political parties. The NPM also needs to be independent from the judiciary and from other actors in the criminal justice system.

The NPM should therefore not include individuals who presently occupy (or are on short term leave from) active positions in the government, the criminal justice system or law enforcement. They should further be independent in the sense that they should have no personal connections with leading political figures or with law enforcement personnel, such as political allegiances or close friendships. Even if the proposed member would in fact act in an impartial manner, if she or he could be perceived as being biased, this could seriously compromise the work of the NPM. Therefore, members must be independent and must be seen to be independent.

Required capabilities and professional knowledge

According to the OPCAT, "State Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge." (OPCAT, Article 18.2)

Preventive monitoring relays on a multidisciplinary approach. The NPM thus needs to be able to draw on professional knowledge in a number of fields, such as human rights, healthcare (including physical and mental health), and the administration of justice.

In the field of healthcare, public health skills will contribute to understand the overall system of health provision in the places of detention. Psychological knowledge is key to understand the mental health aspects of detention, while forensic expertise is needed to examine victims of torture and ill-treatment.

2 « Independent members key to Prisoners' Rights Commission », APT, 17.09.2013.

Pluralistic composition

Thirdly, the OPCAT requires that State parties "strive for a gender balance and the adequate representation of ethnic and minority groups in the country". (OPCAT, Article 18.2) The pluralist composition of the NPM ensures that the NPM is well routed in the different ethnic and social compositions of the country and includes different perspectives. This is of practical relevance when conducting monitoring visits so that the NPM can relate to the different persons it will encounter, and also for it to be able to convince large segments of the population about the importance of preventing torture and ill-treatment, and to communicate its messages in a relevant way.

2. Practical application

Different lessons can be learned from the application of these standards in practice. The following lessons are not an exhaustive list, and more aspects continue to grow with each new National Preventive Mechanism.

Availability

Preventive monitoring is time consuming. Preparation, conduct and follow-up to visits in all parts of the country take a lot of time. Moreover, members of NPMs need to be flexible in the employment of their time in order to be able to react quickly to urgent matters and emergencies in places of detention.

Appointing authorities have a tendency to appoint well-known persons that have proven their capacities and capabilities through a number of previous mandates and appointments at the national and the international level. Such person can indeed be key to give a high-profile to the institution, which in return can open doors and ears of policy makers. Persons with a high-profile reputation might be able to be more upfront and courageous in challenging the administration, which can be necessary at times to push for torture prevention reforms.

The downside of this choice is that such persons might not be available enough for the mandate as a member of the mechanism, for example if they are frequently out of the country or engaged in other activities. The risk of lack of availability is particularly prevalent where members are not engaged on a full-time schedule for the NPM.

Conflict of interest

Members and staff of NPMs need expertise related to detention and the administration of justice. But they will often have acquired this expertise through working within the system. This can lead to conflicts of interest. Conflict of interest can also arise where experts provide services in advisory capacities to authorities in charge of places of detention.

It is important to ensure that members of NPMs are not put in a position where they have to monitor the implementation of policies that are the fruit of their own advice, which would consist of a clear conflict of interest.

In order to avoid conflicts of interest, some authorities have opted for appointing persons at the end of a career or persons that have already retired from service. But of course this will only be effective in societies in which alliance to a service or an administration effectively ends with the end of the contract or career.

In some jurisdictions, NPM members are nominated or proposed by their professional associations or by peers. This might lead to conflict of interest, if they feel that they need to represent the interest of their professional association in the NPM.

Former prisoners can also make important contributions based on their expertise. Some NPMs have therefore started to call upon "former service users" as experts. However, former detainees might also be confronted with a different type of conflict of interest that can manifest itself in a lack of distance when confronted with difficult individual situations. Authorities therefore have to be careful to avoid appointing persons who could be re-traumatised.

In small countries, appointing authorities have tried to avoid conflicts of interest for members of NPMs by appointing members who made their professional experience outside of the country, to ensure that they have a certain distance from civil servants and authorities.

Communication skills

National Preventive Mechanisms provide a link between some of the most vulnerable individuals in society, the illiterate and marginalised among the prisoners, to the highest level of authority in the state. Moreover, they need to be able to communicate their message effectively to the larger public.

Members of the NPM need therefore to be able to communicate with the vulnerable individuals in a simple and respectful way. On the other hand, they need to be able to gain the trust of members of parliament, ministers and senior officials.

This requires very good communication skills and an open mind. Experience in communicating with persons from all walks of lives can therefore become an important criterion for the selection of members. Human rights defenders, doctors, lawyers or teachers might have gathered such experiences. On the other

hand, negotiation skills and readiness to engage with high level authorities is necessary to obtain torture prevention reforms.

In any case, designating persons with a discriminatory attitude would be very inappropriate.

Group dynamic and composition

The NPM needs to be able to function and communicate as an entity. This is particularly challenging when made up of a relatively large number of individuals not engaged on a full-time basis. Appointing authorities have sometimes failed to consider the group dynamic. If a body is made up of several high-level individuals this might lead to a conflict of leadership within the NPM. Members of an NPM should therefore be ready to work in a team and respect each other.

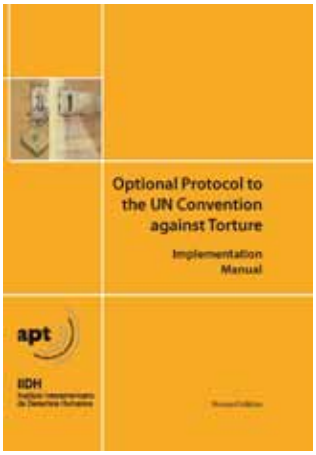
The NPM needs to be able to develop a group identity. This requires that the members will not represent other institutions during visits and meetings in which they represent the NPM. It would be harmful for the NPM if, for example, an NPM member stemming from an NGO providing legal or medical service to detainees would mix up between the different roles while conducting visits.

The OPCAT requires from states to strive for gender balance in the composition of NPMs. In practice it has indeed proven very important for visiting teams to be able to relay on men and women, in particular because of the general segregation of gender observed in places of detention.

Clear rules of procedure and internal regulations can contribute to creating a conducive climate for team work.

Conclusion

Preventive monitoring requires a set of quite specific skills, as briefly laid out in this article. But an NPM can only succeed thanks to the commitment of individuals who are dedicated to preventing abuses against human dignity for all persons deprived of liberty. Successful NPMs are therefore made up of dedicated individuals ready to listen, to observe, to analyse and to follow through for the implementation of recommendations.



For more information check the "Optional Protocol to the UN Convention against Torture: Implementation Manual", APT 2010 and the OPCAT database on the APT website.

2. Recent developments

Mervat Rishmawi
Human Rights Consultant

The following is a brief summary of selected highlights of main developments relating to detention and prevention of torture and ill-treatment in the work of UN human rights mechanisms.

Torture in Libya

In October 2013, a joint report by the UN Support Mission in Libya (UNSMIL) and the Office of the UN High Commissioner for Human Rights (OHCHR) was issued to draw attention to continued violations in Libya despite the Government's efforts. It adds that prolonged detention and interrogation at the hands of armed brigades without experience or training in the handling of detainees or conducting criminal investigations, as well as the lack of effective judicial oversight, create an environment conducive to torture or other ill-treatment. It indicates that torture is widespread and records 27 cases of death in custody. The report recommends that action must be taken to transfer detainees held by armed brigades to effective state control and renewed efforts to build the capacity of the criminal justice system.

Please click here for information on the UNSMIL in Arabic and English and please click here for the report.

Solitary confinement

On 7 October 2013, the UN Special Rapporteur on torture called on the United States to immediately end the indefinite solitary confinement imposed on a detainee since 1972. The Special Rapporteur considered such detention to clearly amount to torture. He stressed that persons held in solitary confinement should always be allowed to challenge the reasons and the length of such conditions of detention, and that they should always have access to legal counsel and medical assistance. He called for an absolute ban of solitary confinement of any duration for juveniles, persons with psychosocial disabilities or other disabilities or health conditions, pregnant women, women with infants and breastfeeding mothers as well as those serving a life sentence and prisoners on death row. It should be noted that in his report to the General Assembly in 2011, the Special Rapporteur stressed that the practice of solitary confinement should be used only in exceptional circumstances or when absolutely necessary for criminal investigation purposes. He also concluded that prolonged solitary confinement and seclusion may constitute torture or ill-treatment.

For more details on solitary confinement and the Special Rapporteur's report on the subject please refer to (A/66/268, 5 August 2011).

Standard minimum rules

The Special Rapporteur on torture urged governments to update the UN Standard Minimum Rules for the Treatment of Prisoners adopted more than five decades ago, but stressed that "any revision must not lower existing standards". The Rapporteur pointed out that the fact that the absolute prohibition of torture and other forms of ill-treatment is absent from the Rules demonstrates that they require considerable revision. He also emphasised the need to regulate the use of solitary confinement, including inserting an absolute ban on its use for indefinite or prolonged durations, and to prohibit any use of solitary confinement against juveniles, persons with mental disabilities and women who are pregnant or nursing. In his report in August 2013, the Rapporteur highlights targeted areas of review and offers a set of procedural standards and safeguards from the perspective of the prohibition of torture or other ill-treatment that should, as a matter of law and policy, be applied, at a minimum, to all cases of deprivation of liberty. Please refer to document A/68/295, 9 August 2013 for the report of the Special Rapporteur on the subject. The next Expert Group meeting deliberating proposed revisions to the Rules will be in January 2014. Click here for the article on the revision of the Rules in issue 4 of the previous Bulletin.

The death penalty

On the occasion of the World Day against Death Penalty on 10 October 2013, the Special Rapporteur on Torture and the Special Rapporteurs on extrajudicial executions called on the international community to intensify global efforts to definitively move States away from the death penalty. They reminded that there remain a number of States where people continue to be executed in contravention of the standards imposed by international law. The Special Rapporteur on Torture warned that the use of the death penalty could entail cruel, inhuman and degrading treatment in violation of international law. The experts drew special attention to the need for retentionist States to ensure that death penalty cases are subject to the most stringent respect of fair trial and due process standards, while recalling UN Secretary-General Ban Ki-moon's words: "The taking of a life is too absolute, too irreversible, for one human being to inflict it on another, even when backed by legal process.".

Enforced disappearances

Chairs of the Committee on Enforced Disappearances and the Working Group on Enforced or Involuntary Disappearances warned that there is a need to better protect relatives and civil society groups working on issues related to enforced disappearances, including those who are directly or indirectly reporting violations. They also stressed how the brutal nature of enforced disappearances requires that all parties work quickly and constructively to ensure its eradication, which require a victim-centred perspective that seeks an integrated long-term approach to adequate justice, truth, memory and reparation. The Committee on Enforced Disappearances has now entered the implementation phase. It started examining the reports of State parties, and receiving requests to activate its urgent action procedure to locate and protect disappeared persons as well as individual complaints on violations of the rights protected by the International Convention for the Protection of All Persons from Enforced Disappearance. For more information on the work of the Committee, please click here.

Access to justice and the Millennium Development Goals

The UN Special Rapporteur on transitional justice warned that "unaddressed human rights violations are spoilers of sustainable development." In his report to the General Assembly in August 2013, he urged the UN and its Member States to incorporate goals on access to justice and remedy in the post-2015 development framework. The Special Rapporteur explained that a limited and narrow approach to development, which ignores justice considerations, will not be sustainable. Therefore, access to justice and remedies must be part of any serious agenda for development. The Rapporteur reminded States of what he called the "Tunisia test" to the new post-2015 framework: goals and indicators established should not foster the appearance of a development success story in societies where development is self-evidently undermined by large-scale deficits in security, justice and rights.

Please refer to the Special Rapporteur's report A/68/345, 23 August 2013 to view the report of the Special Rapporteur.

Military tribunals

The UN Special Rapporteur on the independence of judges and lawyers called for stronger regulation of military tribunals and urged States to adopt the draft principles governing the administration of justice through military tribunals. She noted that military tribunals continue to raise serious concerns in terms of access to justice, impunity, independence, impartiality and respect for fair trial standards.

For the full text of the statement, please click here.

Legal aid

Further, in her annual report to the Human Rights Council, the Special Rapporteur on the independence

of judges and lawyers drew attention to obligations of states in relation to legal aid. She highlighted existing international human rights standards relating to legal aid; and focused on the normative content of the right to legal aid, reviewing the jurisprudence of human rights treaty bodies and regional courts on this issue. She also analysed the legislative, judicial, administrative, budgetary, educative and other measures that States are required to take in order to give effect to the right to legal aid in their domestic order.

For full text of the report, please refer to the document A/HRC/23/43, 15 March 2013.

Women in detention

The UN Special Rapporteur on violence against women raised concern that many countries are witnessing a disproportionate rate of increase of incarcerated women, compared to their male counterparts, as well as harsher detention conditions for them than men. She talked about causes, conditions and consequences of women's incarceration highlighting reasons including incarceration for illegal activities which women commit in response to coercion by abusive partners. Disturbingly, she stressed, in some countries women are also imprisoned for 'moral' crimes such as adultery or extramarital sex, facing stringent evidentiary rules that even result in the incarceration of rape victims. She also highlights how women prisoners often face harsher conditions than those experienced by their male counterparts. Women are vulnerable to numerous manifestations of violence, including rape by inmates and guards, being forced into prostitution or touched in a sexual manner during searches, she underscored.

For further details of the report, please refer to the document A/68/340, 21 August 2013.

Protection of persons deprived of their liberty

The report of the UN Secretary General "Human rights in the administration of justice: analysis of the international legal and institutional framework for the protection of all persons deprived of their liberty" concludes that there is a comprehensive framework for the protection of all persons deprived of their liberty. However, the main challenges lie in the implementation of relevant norms and standards at the domestic level. The report looks into the framework for the protection of all persons deprived of their liberty, looking at standards and recent developments from treaty bodies, special procedures and other bodies. The report is a very good source outlining the standards and developments of jurisprudence. It includes a list of challenges comprising those related to judicial oversight; overuse of detention in various contexts including pre-trial detention and detention of migrants; overcrowding; death and cases of serious injury in detention; and protection of individuals from specific groups deprived of their liberty. The report ends with a number of conclusions and recommendations.

Please click here to access the report.

Role of NGOs in the Universal Periodic Review (UPR)

UPR Info, an NGO based in Geneva, has developed a simple timeline to guide NGOs through the UPR process, highlighting NGOs' role and what to do during the following stages: 1) before the Review; 2) during the Review; 3) between the Review and adoption of the Report at the Human Rights Council; 4) adoption of the Report at the Human Rights Council; and 5) between two reviews.

Please click here to access the timeline.

For further details, including dates for submission of NGO information in forthcoming session of the Human Rights Council up to October/ November 2016 (which marks the end of the second cycle of the UPR), please click here.

3. From the Field



Reenacting Tadmor: When words are not enough…

Monika Borgmann
Director, UMAM Documentation & Research

Cells and tires are arranged on stage in a replica of Tadmor, among the worst of Syria›s prisons.

At seven o'clock in the morning, two guards arrive to begin distributing «breakfast.» Inside one of the tiny cells, a group of men are on high alert. Because they know that surviving the challenge may not be possible, some of them tremble with fear. Others, however, focus unflinchingly on what will happen soon. The guards› shouts become louder as they draw closer, and the tension inside the cell reaches fever pitch. Determined to retrieve the meagre portion of rancid food that will hopefully sustain everyone another day, Raymond resolves to win the next round of the deadly game he has survived for the last five years: the daily race against death.

The men who bring this breath-taking performance to life are not actors: Raymond is among the hundreds of Lebanese who disappeared during the country›s lengthy civil war (1975 – 1990) and spent 12 years in Syrian prisons. When he finally returned home in 1998, Raymond struggled to repress the memories of Tadmor Prison. But when the Syrian revolution erupted in 2011, news about political imprisonment and repression in that country forced Raymond to confront the abuse he suffered and the abiding despair he experienced. Yet it also reawakened his will to resist. After years of living in silence in a society that wanted to know nothing of such foreign travails, Raymond and his comrades decided they would be heard. Not only would they speak in their own behalf, they would also lend their voices to the countless other Lebanese and Syrians still enduring those horrors. After all, the unspeakable is happening again—now!

In 2012, UMAM Documentation and Research began to cooperate closely with another Lebanese NGO, the association of Former Lebanese Political Detainees in Syrian Prisons. During our regular meetings, we learned only too well that alone, words are not enough to describe the torture, pain, fear and humiliation these men experienced. And when words failed them, the men stood spontaneously to re-enact the experiences that defied words. Startled, we soon encouraged them to present a live performance about Tadmor. While we conceived the general idea, every element came from this group of seven men, who decided to confront their trauma: they wrote the script, built replicas of the cells they once inhabited, decorated the stage and decided who would play the prisoner or the guard. They even opted to shift roles periodically. The performance debuted in Beirut on the 11th October 2012, and its success was overwhelming; the long silence had finally been broken. A month later, the troupe was invited to perform in five German cities during May 2013, and as before, each performance was a resounding success.

While I am not a therapist, I have been the group›s mentor throughout this process. To improve my effectiveness, I consulted a certified trauma therapist to gain a better understanding of group dynamics and the healing process. Ultimately, "Reenacting Tadmor" became a form of art therapy, a tool the men could use to exorcise the prison›s evils and jump-start their long-term healing process. Not only did the production enable the men to confront the trauma each had experienced, it also allowed them to share their story with the world.

In terms of its impact, watching the performance is an extraordinarily painful experience since it compels us to ask the ponderous question: What drives humans to such extreme inhumanity? And as the men involved allow us to glimpse snippets of the violence and humiliation they suffered, we are confronted with another important question: Could I have survived…? But despite demonstrating the strength that enables these men to relive those hellish experiences, they teach us that survival is

possible—which gives us hope. In Germany, an audience member asked after the performance how he could help. One of the men answered, «You›ve seen our performance and allowed me to place this burden on your shoulders. Now, you can spread the message….” For those of us involved directly with human rights, this performance produces an almost visceral response since it genuinely recreates the in situ experience of monitoring places of detention. Moreover, it reminds us that depravity and abasement still flourish in Syria and around the world.

Forming a new generation of independent monitors in the MENA region

Giorgio Caracciolo
DIGNITY – Danish Institute Against Torture

The MENA Regional Forum for Monitoring of Places of Detention and Prevention of Torture (the Forum) is an initiative of DIGNITY – Danish Institute Against Torture (Denmark), and Restart Centre for the Rehabilitation of Victims of Violence (Lebanon). We have been working together developing the Forum since April 2012 and joined efforts to bring together civil society organisations (the Forum's members) from nine countries of the region. Today the Forum's goals are to:

1. Facilitate and support Forum members in conducting independent monitoring visits to places of detention, as envisaged by the inherent international standards and mechanisms;
2. Support national lobbying efforts aimed at fully executing the OPCAT, including the establishment of independent National Preventive Mechanisms;
3. Provide technical assistance and follow-up establishing national monitoring teams through joint advocacy efforts as well as via other relevant means;
4. Gather data for the purpose of analytical and monitoring work on conditions of detention in the MENA region and for the purpose of advocacy and lobbying to promote prevention of torture as well as cruel, inhuman and degrading treatment or punishment.

In order to achieve these goals DIGNITY and Restart propose that members of the Forum meet in regional meetings or tailored working group meetings to exchange monitoring experiences and develop best practices. In doing this, the Forum receives the support of independent experts as well as leading organisations such as the APT.

From November of this year the Forum will enter its second operational phase (the first phase being finalised in June 2013) and new ideas will be introduced to the members in order to profit - as a regional group - from the lessons learnt during the first year of work and maximise the benefits provided by the Forum.

One idea that excites us is to create a new working group dedicated entirely to young professionals. This group aims at nurturing a 'new generation' of monitors that can strengthen the long-term sustainability of the Forum's members in the field of monitoring as well as secure the practice of independent monitoring of places of detention during the years. The group is open only to young professional in their twenties and thirties who will be offered the opportunity to follow a tailored programme of training on how to implement monitoring in places of detention.

Opening of the 4th Meeting of the Regional Forum for monitoring of places of detention and prevention of torture

The training programme is developed by DIGNITY and Restart with the intention of covering main key elements of monitoring within a period of 6 – 8 months; but our ambition is to go beyond discussing the international standards defining the practice of monitoring and offer an insight into theories advanced by recent academic studies aimed at understanding the so-called prison climate.

The idea is to analyse detention's conditions through a holistic lens. The starting point to interpretation remains, first and foremost, the framework set by the universal human rights system and its instruments of hard and soft international law. Nevertheless, the programme promotes elements of social and anthropological field-based research that focus on the 'conditions' of detention from an internal,

values-oriented, or moral perspective, whereby the so-called prison climate brings into consideration the realities of daily practice and societal dynamics with the aim of promoting effective improvements of detention conditions.

We hope that this programme may also trigger strategic thinking to define which approach can suit best each country's reality (often where access for independent monitoring is denied). The programme will make use of three seminars, where the group will meet physically, and of remote work that will engage the young participants between physical meetings.

Our goal is not only to contribute to forming new monitors but also to engage the participants' organisations in longer partnerships whereby their young staff can contribute actively to the regional capacity building programmes led by DIGNITY and Restart. In other words, we aim at forming new trainers; new experts.

We are excited to start the second phase! The first Forum's regional meeting will be held in Tunis (4-7 November) and the theme will be 'monitoring police stations'. We expect great contributions from leading national and international organisations working in the field. We plan to dedicate the first day to presentations and exchanges and from the second day on we will work predominantly in working groups. In addition to the working group addressing young monitors, three other working groups will move forward with their agendas: a working group on OPCAT, one dedicated to health professionals acting as monitors, and one dedicated to supporting the establishment and development of national monitoring teams.

One key feature of our regional meeting is to provide the participants (i.e. the Forum's members) with the opportunity to undertake a field visit to places of detention under the guidance of expert monitors. We are dedicating a lot of attention to formulating ideal terms of reference to guide the visiting teams as well as informing the authorities on the purpose and modalities of these visits. This is a paramount opportunity to learn – in a semi-controlled environment – the practice of monitoring.

Finally, we like to extend an invitation to young readers of the eBulletin who are active in the anti-torture field and interested in becoming monitors to contact DIGNITY or Restart to check whether there is a possibility to join our work. We also welcome civil society organisations interested in the work of the Forum to contact us. Please write to gca@dignityinstitute.dk

Detention centre visits conducted by Al-Haq

Naser Al Rayes
Legal Advisor, Al-Haq[3]

We in Al-Haq began like other defenders of human rights and freedom: we were interested in visiting those who had been detained, arrested, and held in detention centres, in order to see conditions in which they were held and how they were treated during investigations, after they were convicted, and while their sentences were being carried out. In order to visit these detention centres, we contacted the relevant security authorities when visiting detainees they held, and contacted the Minister of the Interior and the Chief of Police when visiting the Ministry of the Interior's detention centres. We would typically wait for several days before receiving a response granting us permission to visit. During every visit, we noticed that the conditions where the detainees were being held, their treatment, their food, and other aspects we sought to monitor were all good. This led us to consider stopping these activities – we were convinced that these routine visits, scheduled days in advance, are ultimately unimportant and futile. In our opinion, such visits allow official authorities enough time to address any shortcomings and take action in order to avoid revealing violations or ill practices.

With this in mind, we began to think that it is both important and necessary for organisations to have the right to make surprise visits to detention centres; that is, visits immediately or within a few hours after contacting the security apparatus. We believe that these types of visits are required in order to determine and monitor the actual conditions in detention centres. After a number of calls and discussions, we were able to obtain the agreement of the Palestinian General Intelligence Service. We were able to convince the head of the Palestinian General Intelligence Service how important having this agreement is, and the role these surprise visits to the General Intelligence Service detention centres would play and the impact they would have on improving the performance of law enforcement officials in the intelligence services.

In practice, we carried out a number of surprise visits to the General Intelligence Service's detention

3 Al-Haq is a Palestinian human rights organisation based in Ramallah, the West Bank, working on human rights violations by various authorities in all the occupied Palestinian territory.

centres in all areas of the West Bank (the Palestinian National Authority's areas) during 2012. We made three such visits in 2013, all based on complaints or information from families or lawyers about violations or ill-treatment in the centres that we visited.

About two or three hours after we contacted the Legal Department of the General Intelligence Service to inform them we wanted to visit, we conducted a surprise visit, in which we inspected the inmates and the conditions in which they were detained. We met with the detainees both individually and in groups in the rooms in which they are held, without the presence of any General Intelligence Service personnel. During these visits, the detainees make a general evaluation of the conduct of law enforcement officials, including any comments or complaints about those in charge of the centre. This would be included in an evaluation report of our observations of various conditions. The report is sent to the Director General of the centre and its relevant authorities, and a copy of the report is sent to the Director of the General Intelligence Service.

Although we only have carried out these surprise visits for a short period of time, they are important, impactful, and have had a number of effects on the performance of law enforcement officials in the General Intelligence Service, specifically:

- Those in charge of the detention centres have realised that there are external organisations that play an effective role in monitoring their performance, which has improved their behaviour and reduced the extension of violations to a large degree.
- We are able to determine actual conditions of detention centres, with transparency and without any interference.
- Shortcomings and violations can be effectively addressed.
- It became clear to us that these visits are important when the head of the General Intelligence Service began to undertake certain actions based on the reports from our visits. These actions included releasing people detained without legal grounds, and ending other practices like restricting visits, as well as holding individuals accountable for violations such as torture or ill-treatment.

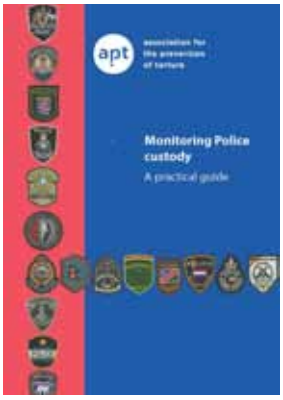
Our experience of conducting surprise visits to the General Intelligence Service's detention centres has without a doubt been successful. At this point, these visits are unique among the various Palestinian Security Services, yet it has initiated a discussion around other services on the possibility of expanding these activities to include other services. Indeed, it would represent a qualitative shift if the Palestinian Security Services gave civil society organizations an important and fundamental role in improving the rule of law, and strengthening respect for and the application of human rights and freedoms under all circumstances.

4. Recent Publications

The following are publications by APT relevant to the theme of the Bulletin, focusing on monitoring places of detention.

List of APT Publications on Detention Monitoring (1997-2013)

Monitoring Police Custody - A practical guide, 2013
Language versions: Arabic, English, French, Russian
Soon to be published: Portuguese, Spanish

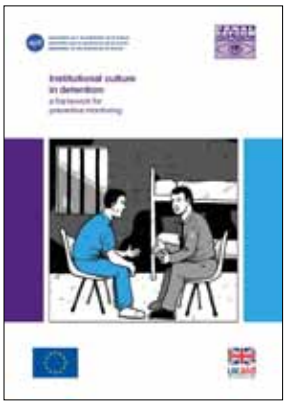


Visiting Immigration Detention Centres: a guide for parliamentarians
APT/Council of Europe, 2013
Language versions: English, French

Balancing security and dignity in prisons: a framework for preventive monitoring
APT/PRI, 2013
Language: English

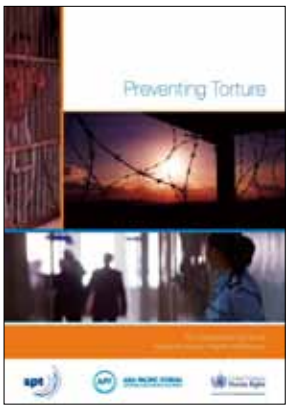
LGBTI persons deprived of their liberty: a framework for preventive monitoring
APT/PRI, 2013
Language: English

\Institutional Culture in Detention: a framework for preventive monitoring
APT/PRI, 2013
Language versions: English, French, Georgian, Spanish

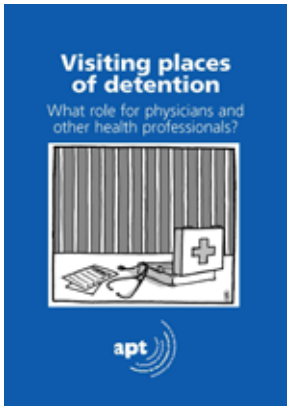


Women in detention: a guide to gender-sensitive monitoring
APT/PRI, 2013
Language versions: English, French, Georgian, Spanish

Preventing Torture: An Operational Guide for National Human Rights Institutions + accompanying CD Rom (subtitles in English & French, soon in Arabic)
APT / APF / OHCHR, 2010
Language versions: Arabic, English, French, Spanish, Russian

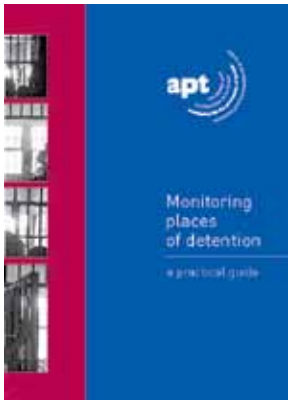


Visiting places of Detention: what role for physicians and other health professionals, 2008
Language versions: Arabic, English, French, Spanish



Guide: Establishment and Designation of National Preventive Mechanisms, 2007
Language versions: English, French, Portuguese, Russian, Spanish
(also translated by local partners into: Arabic, Macedonian, Nepali, Polish, Russian, Serbian & Turkish)

Monitoring places of detention: a practical guide, 2004
Language versions: English, French, Portuguese, Spanish
(also translated by local partners into: Albanian, Arabic, Armenian, Azerbaijani, Bahasa Indonesia, Farsi, Georgian, Korean, Mongolian, Nepali, Polish, Romanian, Thai, Turkish)



Detention Monitoring Briefing Series:

1. Making effective recommendations (2008)
2. The Selection of Persons to Interview in the Context of Preventive Detention Monitoring (2009)
3. Using Interpreters in Detention Monitoring (2009)
4. Mitigating the risks of sanctions related to detention monitoring (2011)

Videos:

- Parliamentarians visiting immigration detention
- Prevention of torture and ill-treatment in police custody

APT publications can be downloaded for free from our website: www.apt.ch/publications

5. Questions and Answers

Protecting irregular migrants in detention

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Tanya Norton
APT Detention Monitoring Program Officer

Here the term "**migrant**" is defined broadly to mean persons who are outside the territory of the State to which they are nationals or citizens. This could include particular categories of persons such as asylum seekers, undocumented and stateless persons, trafficked or tortured persons and others.

Immigration detention is generally administrative in form, but it can also be judicially sanctioned. It is generally not meant to be punitive in purpose (as opposed to criminal detention). Authorities usually detain migrants for one of the following reasons: while they verify their identity, during the refugee status determination or similar process, and/or when a deportation decision has been made to ensure the migrant does not abscond.

How is detention of migrants used?

"States use a wide range of reasons to justify the detention of migrants and some States see irregular migration as a national security problem or a criminal issue, and neglect the human rights issues at stake… There is no empirical evidence that detention deters irregular migration, or discourages persons from seeking asylum."
Special Rapporteur on the Human Rights of Migrants. A/HRC/20/24; paragraph 8, April 2012.

"We need to focus less on the flows, stocks and waves of migration per se, and more on the individual human rights and situations of migrants themselves. At its heart, migration is fundamentally about human beings."
Navi Pillay, Opening Statement, High Commissioner for Human Rights, High Level Dialogue on International Migration and Development, September 2013.

Today the use of detention as a migration management tool (referred to as immigration detention) by many governments is on the rise, resulting in migrants and asylum seekers, including those who are stateless, increasingly being subjected to arbitrary or unlawful and/or prolonged detention which in some cases amounts to ill-treatment.

What are the conditions under which migrants are detained?

Migrants are regularly detained in conditions unsuited to their particular situation and can be even worse than those faced by persons detained under criminal legislation in the same country. They sometimes have limited or no access to asylum procedures and to the three key safeguards important to prevent torture; namely prompt access to a lawyer, medical examination by an independent physician and contact with the outside world.

Places of detention are particularly sensitive as they are naturally environments where individuals are vulnerable vis-à-vis the State and can be at risk of ill-treatment or torture. Immigrant detainees are thus already in a situation of vulnerability and this situation can be further exacerbated for persons with specific needs or risk categories such as women among a majority of men, children (including unaccompanied or separated), mentally and physically disabled persons, victims of torture or trauma, trafficked persons, single elderly and persons who may be subject to discrimination because of their sexual orientation. The screening process of migrants prior to detention is crucial in ensuring that migrants with special vulnerabilities, such as those listed, are identified and benefit from alternatives to detention.

Where are irregular migrants being detained?

Some countries have dedicated facilities for the detention of irregular migrants, whereas in other countries they will be detained with persons accused or convicted under criminal law. This is the case in the Middle East where in the majority of countries migrants are detained in prisons, police stations and lockups, airports, disused warehouses or private security company compounds, military bases and other places (in some contexts immigration detention is practiced in remote locations such as in secretive holding cells). This is not an exhaustive list and is focused on non-refugee camp settings.

What are the basic legal norms related to the detention of migrants?

The applicable international legal framework includes international human rights law (IHRL) and international refugee law (IRL). As a starting point

it is important to recall that detention is in itself a major limitation on the rights of the individual and thus its legality, legitimacy, necessity and length should always be under close scrutiny. The following presents a few of the basic norms to be aware of:

- Detention of migrants should only be used as a last resort.
- Detention is only permitted as a matter of international law where it is necessary and proportionate to the legitimate objective to be achieved and only after less restricted alternatives have been found to be unsuitable in each individual case.
- All forms of detention must be prescribed in national law.
- No one should be subject to indefinite detention, But also detention should be for the shortest possible time with limits on the length of detention that are strictly adhered to.
- Migrants are provided with at least the same safeguards from abuse as those offered to other categories of detainees. These are 1) to have access to a lawyer; 2) to have access to a medical doctor, and 3) to be able to inform a relative or a third party of one's choice about the detention measure.
- Detention should be under conditions that reflect the non-criminal status of the persons and their needs.
- The special needs of groups of migrants in situations of vulnerability must be taken into account and appropriate safeguards must be put in place.

What role can you play?

All actors including National Human Rights Institutions (NHRIs), non-governmental organisations (NGOs), human rights/migrant rights defenders and Parliamentarians, have a specific value added to the complex system of the protection and promotion of migrants rights in detention and there is an increasing need to look at ways for the variety of players to work together.

Good practices have shown that the mere fact of monitoring places of immigration detention by NHRIs, Parliamentarians, NGOs or others can open up the closed world of custody and contribute to increasing transparency and accountability and strengthening public confidence. These visits also have an important deterrent effect and reduce the risk of human rights violations.

Only by shining light on the actual conditions and day-to-day practices, practical steps can be taken to improve the treatment of migrants deprived of their liberty and vulnerable to all forms of ill-treatment. Conducting visits can be instrumental in pressing and assisting the authorities to address the problems and improve them. You can play a crucial role in this process by carrying out immigration detention visits as well as supporting others to gain access.

Below are some suggestions of other possible roles/ actions that can be used:

- making recommendations to strengthen a country's legal framework,
- advocating alternatives to detention for migrants in an irregular situation,
- promoting their access to justice and legal services, and
- providing training and education to public officials and raising community awareness of the issues facing migrants in detention.

How should national actors respond to reservations to the UN Convention against Torture?

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Matthew Sands
Legal Advisor, APT

Recent accessions to human rights treaties, including the UN Convention against Torture (UNCAT), have included 'reservations' which modify or exclude the legal effect of treaty provisions. In some cases, treaty reservations are seen as stumbling blocks to the implementation of international standards. Many international human rights treaties permit the use of reservations, though some treaties, like the Optional Protocol to the Convention against Torture (OPCAT) and the Rome Statute of the ICC, explicitly exclude their validity. For instance, the OPCAT states clearly in its Article 30 that "No reservations shall be made to the present Protocol".

On one hand, reservations allow States to participate in a treaty that they would otherwise be unable to

join. On the other, reservations lead to asymmetrical relationship between States parties. One State may opt-out of a provision which is valid for others, thus undermining the mutuality of treaty obligations. Some reservations are so broad that they may even attempt to reduce the significance or impact of the treaty itself.

Fortunately, reservations to the UNCAT itself have been limited. The Convention on the Elimination of Discrimination against Women, by comparison, has attracted the largest number of reservations, particularly from MENA States. Significantly, some of these reservations are based on Islamic sharia.

Of course, MENA States do not always make reservations based on sharia. It should be emphasised that many MENA States joined the UNCAT and other human rights treaties without entering any reservations at all, and many States from outside the MENA region also seek to limit or exclude the application of treaty provisions insofar that they are not in conformity with their national law.

The 1969 Vienna Convention on the Law of Treaties clearly provides that reservations, where they are allowed, must be specific and must not be incompatible with the 'object and purpose' of the treaty. In a Guide to Practice on Reservations to Treaties, the International Law Commission explains that this rule requires that reservations must not impair the raison d'etre of the treaty.

The object and purpose of the UNCAT is the effective prohibition of torture as well as cruel, inhuman or degrading treatment or punishment, itself a peremptory norm of international law. Some of the specific provisions of the UNCAT include specific rights and supportive safeguards that provide the necessary framework for securing the rights in the Convention. Such rights and safeguards are themselves essential to the effective prohibition of torture and other ill-treatment, and any reservations which limit or remove such protections could therefore also be unacceptable.

Where a State party is concerned that a reservation is unacceptable, it may enter a formal objection, which generally precludes the operation of the reservation between it and the reserving State. This means that the reserving State cannot rely on its reservation in its bilateral exchanges with the objecting State. However, the impact of such an objection is limited. As noted by the Human Rights Committee in its general comment on reservations (No.24), human rights treaties are "not a web of inter-state exchanges of mutual obligations. They concern the endowment of individuals with rights". As any objection does not affect the relationship between the reserving State party and individuals looking to rely on the Convention rights, the objection therefore has little immediate effect. Nonetheless, an objection to a reservation may at least serve to highlight the issue and provide the treaty body responsible for overseeing the implementation of the treaty itself with some guidance in its interpretation as to the compatibility of the reservation with the object and purpose of the treaty.

The UAE's recent accession to the UNCAT in 2012 was accompanied with a reservation which has, to date, attracted 13 objections from States parties. The reservation, in part, provides "that the lawful sanctions applicable under national law, or pain or suffering arising from or associated with or incidental to these lawful sanctions, do not fall under the concept of 'torture' defined in article 1 of this Convention or under the concept of cruel, inhuman or degrading treatment or punishment mentioned in this Convention."

The reservation significantly limits the State's commitment to uphold the obligations of the Convention. It implies that state-sanctioned acts of torture and ill-treatment do not violate the UNCAT prohibition, thus essentially removing much of the prohibitive effect of the treaty. Such a reservation is clearly incompatible with the object and purpose of the treaty, and should be withdrawn at the earliest opportunity.

On Pakistan's ratification of the UNCAT in 2010, it purported to make the treaty subject to 10 reservations, limiting its application to compatibility with provisions of the Constitution, sharia law and certain domestic laws in force. Some 23 States objected to such a position. By making the application of the Convention subject to the provisions of general domestic law already in force, it would have been unclear to what extent, if any, Pakistan found itself bound to obligations of the UNCAT. Significantly, Pakistan has since withdrawn most of its reservations to this and other human rights treaties.

Botswana and the USA also made reservations of general nature which attempt to limit the scope of the Convention, which also brought objections from several states. Early in the life of the UNCAT, Chile and the German Democratic Republic also entered problematic reservations. However, both Chile and the GDR subsequently withdrew their reservations after a number of objections.

International law provides reservations should not affect an essential element of the treaty nor its general meaning. Advocates should encourage States with operational reservations to remove such reservations at the earliest opportunity. National actors might seek clarification on what issue requires the operation of the reservation, and a time period required for the State to render its own laws and practices compatible with the treaty. Concluding observations by treaty bodies often include remarks concerning such reservations and call on States to lift them. National actors may find these observations a useful guidance.

The International Law Commission further encourages States to conduct a periodic review of reservations, to consider whether they continue to serve their purpose, and withdraw the reservation when they are no longer needed. Such a review should take into account the importance of preserving the integrity of the treaty, the usefulness of the reservation, and any developments in international law. National actors should encourage States to conduct such a review, or conduct the review among civil society bodies if the State is unwilling to conduct the review itself.

Reservations are an inevitable consequence of the framework of treaties, through which we are attempting to protect human rights and fundamental freedoms. Where States attempt to undermine or reduce the impact of human rights treaties through reservations of a general nature, national actors should take action to advocate for the removal of offending reservations.

The Middle East and North Africa: **A Torture-Free Zone.**

A periodic electronic bulletin published by the Association for the Prevention of Torture (APT). For further information about the work of APT, see www.apt.ch

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