

One voice, multiple actions to prevent torture in Africa

Strategic Consultative Meeting
and Regional Roundtable
held in the framework of the
OPCAT Global Forum

Geneva, 9 and 11 November 2011

Report



The Association for the Prevention of Torture (APT) is an independent non-governmental organisation 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 organisations, 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 organisation 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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Foreword

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 *“Preventing Torture, Upholding Dignity: From Pledges to Actions”*, that took place in Geneva on 10-11 November 2011, gathered participants from the different continents and from different backgrounds.

For the African region, the Forum represented another milestone in the development of a regional dynamic to prevent torture and other cruel, inhuman or degrading treatment or punishment, lead by the APT over the past decade and which started with the adoption of the Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa (RIG), in 2002, and that was boosted by the Dakar Conference in April 2010.

Therefore the APT took advantage of the Global Forum to convene a Strategic Consultative Meeting on OPCAT for Africa, under the leitmotiv *“One voice, multiple actions”*. Participants emphasised the need for Africa to convey in one voice proclaiming the prohibition of torture and to undertake multiple actions to fight and prevent it. Indeed, prevention implies junction of efforts of various actors and search for dialogue. The gathering increased the motivation of key actors in the promotion of torture prevention initiatives in the field. It also has given shape and substance to a more informed and oriented African discourse on torture prevention through a set of concrete recommendations and ways forward that came out from the meeting and from the Global forum on the OPCAT.

These recommendations as well as the Dakar Action Plan adopted by the 2010 Dakar Conference, which all echo the RIG, need now to be sustained by a strong mobilisation of various actors to fight for their implementation. The celebration of the RIG 10th anniversary that will take place in South Africa in August 2012 will provide the ideal opportunity to this end.

In order to move “from pledges to action” in Africa, the APT will continue supporting the States, the National Preventive Mechanisms (NPMs), National Human Rights Institutions, Civil society organisations and other concerned stakeholders by providing advice and technical assistance in the implementation of the RIG, the OPCAT and other torture prevention initiatives. The APT will also continue playing a catalyst role by facilitating a sustained interaction between

relevant actors including through promotion of exchange visits, cooperation and sharing of good practices in order to invigorate the building of synergies in torture prevention in Africa.

Last not the least, I would like to acknowledge the commitment and perseverance of our Africa Programme Officer, Jean Baptiste Niyizurugero, who has been behind all our advances in Africa over the last decade and more. The regional Consultative Meeting and the present publication would not have been made possible also without the involvement and commitment of Ilaria Paolazzi, Africa Programme Adviser. I would like also to extend thanks to Amanda Dissel, APT Delegate in South Africa and Tem Fuh Mbuh, CPTA Assistant, who took notes of the meetings and drafted the text of this publication as well as Aline Irakarama, Africa Programme Intern, who finalised the text and Anja Härtwig, Publications Officer, for the lay out work. Finally, I would like to express my gratitude to the generous donors. The Strategic Consultative Meeting for Africa was especially made possible by financial contribution from the Ministry of Foreign Affairs of Belgium.

Mark Thomson

Secretary General

Association for the Prevention of Torture

Introduction

In 2010, in the spirit of stimulating and mobilising of all available energies for a better prevention of torture in Africa, the Association for the Prevention of Torture (APT) organised, in collaboration with Amnesty International – Senegal and the African Commission on Human and Peoples' Rights (ACHPR), a regional conference on torture prevention which took place in Dakar, Senegal, in April 2010.

The meeting discussions were synthesised in the conference declaration which was adopted by participants. The outcome declaration entitled "***The Dakar Action Plan: Eight Points for the Prevention of Torture in Africa***" recalls the universal ban on torture and other cruel, inhuman or degrading treatment, as well as the need and obligation for actions in prevention. The Plan of Action sets out, in eight points, the relevant measures for the ratification and effective implementation of the Optional Protocol to the UN Convention against Torture (OPCAT) in Africa, and complements the actions of the Robben Island Guidelines on the Prohibition and Prevention of torture in Africa (RIG), adopted by the African Commission on Human and Peoples' Rights in 2002.

Since the Dakar conference, ratification campaigns have been successful in raising the number of African States Parties to ten and accelerating the ratification process in some of the signatory States. One and a half years after the adoption of the Dakar Action Plan, the APT thought it timely to analyse the tendencies which have emerged so far, especially in relation to the implementation of the OPCAT in Africa.

Despite the positive evolution observed, the resulting obligations of ratification of the OPCAT are not being met, particularly the key focus of the OPCAT, which is the establishment of operational mechanisms. In Africa, the implementation process, through the setting up of NPMs as well as the functioning of the designated ones, is facing many challenges. In particular, there have been significant delays and obstacles in establishing effective NPMs. Sometimes, despite the adoption of national legislation, the necessary appointment of position holders has not eventuated. Also, the choice of the most appropriate form of NPM has not always been clear or based on an assessment of the contextual situation and a broad consultation. Finally, the impact of the work of designated NPMs is affected by a series of recurrent challenges, such as lack of resources, expertise and organisational clarity, and the dialogue as well as cooperation between relevant stakeholders at national and international level is still ad-hoc.

These issues require critical reflection, and the Global Forum on the OPCAT “Preventing torture, upholding dignity: from pledges to action” seemed to be a unique framework to do so. To this end, the consultative meeting focusing specifically on Africa has been organised on the 9th of November 2011, prior to the Global Forum in order to pave the way for further discussion during the Forum and to maximise its potential benefit to African actors. Entitled “One voice, multiple actions to prevent torture in Africa”, the gathering enabled the 40 participants from 14 different African countries to undertake together such analytical reflection.

This publication reports on the proceedings of the Strategic Consultative Meeting on OPCAT for Africa (I) and on the Africa Regional Round Table held in the framework of the Global OPCAT Forum on 11 November 2012 (II). It summarises the discussions and exchange between participants where innovative ideas for effective OPCAT implementation and torture prevention emerged. The report provides also with the outcome of both meetings which is a series of useful concrete recommendations and ways forward for furthering torture prevention (III) in Africa. It should be read in conjunction with the APT’s Outcome Report of the Forum for a comprehensive view of and benefit from the Global OPCAT Forum.



Narrative Report of the Strategic Consultative Meeting for Africa

Wednesday 9 November 2011

1. Welcome and introductory session

In her opening remarks, Barbara Bernath, APT Chief of Operations, welcomed all participants to the meeting. Ms. Bernath recalled that the meeting was an offshoot of the Dakar conference. She then expressed the wish that discussions during the meeting would generate creative and practical ways of putting the commitments taken during the Dakar Conference into practice. She stated that the meeting was a very important moment for debates on the effective implementation of the Optional Protocol to the UN Convention against Torture (OPCAT) in Africa. She concluded by expressing the readiness of the APT to continue supporting torture prevention initiatives in Africa and wished participants a fruitful deliberation.

Following this, Mr. Jean-Baptiste Niyizurugero, APT Africa Programme Officer, outlined the rationale, objectives and methodology of the meeting. He stated that the main aim of the meeting was to take advantage of the Dakar Conference to build a regional dynamic on torture prevention in Africa by evaluating the level of OPCAT implementation and sharing experiences on successes and difficulties. After the Dakar Conference, a number of important developments have taken place in Africa in terms of OPCAT ratification and implementation, especially regarding the establishment of National Preventive Mechanisms (NPMs) and a number of trends have emerged in this respect. He said that it is therefore imperative to share experiences and to seek practical solutions specifically responding to African challenges. Mr. Niyizurugero stressed that torture prevention requires collaborative initiatives. For this reason the APT had invited representatives of States Parties, civil society organisations, National Human Rights Institutions (NHRIs), and Regional and international actors in order to invigorate the building of synergies in torture prevention in Africa.

The specific objectives of the Strategic Consultative Meeting were to:

- Encourage participants to prioritise the prevention of torture in their national agendas;
- Increase the commitment to advocate for OPCAT ratification and its effective implementation;
- Further the promotion of inclusive dialogue and joint efforts as a means to deepen understanding of the OPCAT system and effectively implement it;
- Analyse regional trends and challenges on establishment of NPMs and discuss possible solutions based on the OPCAT provisions;
- Promote and facilitate the replication of best practices and the conversion of challenges into creative solutions; and
- Converge national and regional synergies towards effective OPCAT implementation.

2. Roundtable of presentations and brainstorming on OPCAT developments in Africa

After a short roundtable where participants introduced themselves, an overview of the OPCAT situation in the different African countries represented at the meeting was given by the representatives of those countries. In particular, participants described the current level of implementation of the OPCAT in their own countries, specifying what has been done, how it contributed to one of the following stages:

- Signature;
- Advocacy or national campaigns for ratification;
- Ratification;
- National consultation with various stakeholders on NPM options;
- Assessment of existing mechanisms for their suitability for the role of NPM;
- Designation of NPM (which institution?);
- Establishment of NPM;
- Mapping of places of detention in the country.

Below is the summary of the OPCAT situation in the 14 countries represented in the meeting, according to the participating representatives.

Benin

Benin **ratified the OPCAT in September 2006** and the authorities decided to create a new mechanism as National Preventive Mechanism (NPM). Legislative texts have been drafted to this effect although the process has not yet been finalised. There was a broad consultation with all relevant stakeholders on the choice of NPM. Places of detention have been identified and mapped. Existing mechanisms were assessed and judged to be inadequate for the role of NPM; hence a Bill was drafted to establish a **new mechanism**. This Bill remained blocked in the Cabinet for some time until the joint visit of the CPTA and the APT in 2009, which persuaded the authorities to integrate the Bill's provisions into the Penal Procedural Code. However, the **law amending the penal procedural code** is still at the level of the Parliament and has not yet been passed.

In the same vane, it was decided to use the reform of the penal code and the penal procedure code to domesticate the UN Convention Against Torture (UNCAT), by including some of its provisions. This process has not been concluded either and therefore, **torture has not yet been criminalised**. The Ombudsman is currently operational in receiving reports of abuses in prisons and making recommendations. One of those was for the President of the Republic to visit some prisons. He undertook such visit this year and it helped generate public awareness on the issue of torture prevention.

Burkina Faso

Burkina Faso became a **party to the OPCAT in July 2010 following the Dakar Conference**. There are mechanisms in place that monitor places of detention but they are not fully compliant with the requirements of the OPCAT. Therefore, the authorities have decided to designate a **new mechanism** as NPM. **Two draft texts** have been elaborated to this end, one on the criminalisation of torture and another one on the establishment of an NPM.

Cameroon

Cameroon **signed the OPCAT in 2009**, but ratification has not been completed yet. In fact, despite the adoption by the government of a **ratification law in July 2010**, the instrument of ratification still has to be deposited with the Secretary-General of the United Nations at the UN Headquarters in New York. There have been **no broad based consultation** on the choice of NPM and it is not certain whether a study to identify places of detention has been undertaken. Prosecuting attorneys as well as the National Commission on Human Rights and Freedoms have the mandate to undertake visits to places of detention but they do not play this role effectively. Cameroon has domesticated the UNCAT by integrating **provisions criminalising torture in its penal code**.

Republic of Congo

The Republic of Congo **signed OPCAT in 2008 but has not ratified it yet**, and there are no initiatives in place to move the process forward. No mechanism is mandated to monitor places of detention but a decree has been drafted to create such a body following lobbying from civil society. There is no legislation in place criminalising torture and mapping of places of detention covered by OPCAT has not been done.

Ghana

Although Ghana has spearheaded many initiatives on the continent, it still lags behind when it comes to OPCAT ratification and implementation. Ghana **signed the OPCAT in 2006** and an ad hoc OPCAT Committee was created, made up of representatives of civil society and government, to advocate for OPCAT ratification and implementation. Following a recent APT visit, the President gave the **go-ahead for the ratification** of OPCAT and the Attorney-General has written to Parliament in this respect. Government approval for ratification has already been secured and it is expected that Ghana will ratify very soon. While waiting for the ratification, the **Commission on Human Rights and Administrative Justice** is undertaking regular visits to places of detention in order to **monitor the human rights situation**. These places include non-traditional places of detention such as prayer and witch camps. So far, no broad-based consultation on the process of NPM designation has taken place.

Madagascar

Madagascar has **signed the OPCAT in 2005** but it has not yet ratified. A **national legislation criminalising torture** was adopted in 2008 but its implementation by law enforcement officials remains a challenge. The philosophy of torture prevention is not yet well known in Madagascar. But thanks to the support of the APT, some positive results have been observed. Similar to the case in Uganda, the government of Madagascar wanted to complete the criminalisation process before embarking on the OPCAT process. However, given the positive developments, it is now timely to move forward with the ratification. In fact, the delegation from Madagascar who attended the CAT examination of Madagascar initial report in November 2011 has stated that the ratification of the OPCAT will be included into the national action plan. There are also de facto mechanisms that monitor places of detention although they do not conform to the OPCAT.

Malawi

Malawi has **neither signed nor ratified the OPCAT**. The main reason for this has been lack of awareness of the instrument. The Rabat Conference on the role of NHRIs in the Prevention of Torture, which was organised by the APT and the African network of National Human Rights Institutions in September 2011, has now opened up a new space for dialogue with the state on the issue. In particular, the Ministry of Justice and the Ministry of Foreign Affairs have set up a **committee for the ratification of the OPCAT**. The ratification process is therefore gaining a lot of momentum and it is hoped that this will be achieved soon. The Inspectorate of Prisons and the Human Rights Commission are conducting monitoring activities to places of detention but these bodies do not fully conform to the OPCAT requirements.

Mali

Mali ratified the OPCAT in 2005. In 2006 the **National Commission on Human Rights was designated NPM**. A sub-Commission for the Prevention of Torture has been set up within the NHRI and given the mandate to regularly visit places of detention, to make recommendations to the competent authorities and to submit comments and proposals regarding the legislation or bills. However, neither the Commission nor the sub-Commission were compliant with the relevant international standards, namely, the Paris Principles and the OPCAT. In 2009 a new law reforming the mandate of the National Commission on Human Rights according to the Paris Principles was adopted. This law reaffirmed the mandate of the Commission to undertake preventive visits to places of detention. However, the Commission still **lacks independence** and the sub-Commission for the prevention of torture is not operational due to **limited resources**. Following the Dakar Conference, there has been discussion within the Ministry of Justice to designate a new NPM that would be separate from the Commission.

Mauritius

Mauritius was one of the first countries in Africa to ratify OPCAT and the first worldwide to receive an **SPT visit**. In fact it **ratified in 2005** and the SPT conducted its visit in October 2007. The **National Human Rights Commission was designated NPM** in the framework of this SPT visit but foundational legislation has yet to be finalised and approved. In May 2011, the government of Mauritius stated to the Committee against Torture that *“draft legislation has been prepared to review the structure of the National Human Rights Commission with a view to enabling it to accommodate the Human Rights Division, the Police Complaints Division and a third Division which will discharge the duties of the national preventive mechanism as provided for in the Optional Protocol to the Convention”*.

Nigeria

Nigeria has **ratified the OPCAT in July 2009** and has established a new institution as NPM, the **Committee for the Prevention of Torture**. However, the NPM has not been provided with adequate resources and until today it cannot carry out its mandate in a proper and effective way.

Senegal

Senegal has **ratified the OPCAT in October 2006** as a result of the initiatives of the national coalition which was created during the APT-Amnesty International Senegal joint seminar on the promotion of a prompt OPCAT ratification and sound implementation. The APT and the national coalition organised a national consultation seminar involving all relevant national stakeholders where NPM options were discussed and identified. The participants agreed upon the creation of a **new institution**, the adoption of a “road map” and the establishment of an **OPCAT Committee** composed of representatives from the Ministry of Justice, Interior, Armed Forces, representatives from four different NGOs and the Senegalese Human Rights Commission. The OPCAT Committee offered its assistance to Minister of Justice in drafting of the NPM law. On 2 March 2009 the law entered into force but the head of the NPM has still to be appointed.¹

South Africa

South Africa **signed the OPCAT in 2006**. In 2002 it hosted a high level conference on the drafting of the Robben Island Guidelines. The country has not yet ratified OPCAT but background studies and **consultations on ratification** have been finalised and it is hoped that the instruments of ratification will be deposited by September 2012, at the occasion of the UN Treaty Event. An inter-ministerial committee has started to

¹ In January 2012, a few months after the Geneva OPCAT Forum and the OPCAT Strategic Consultative Meeting for Africa, Mr. Boubou Diouf Tall was appointed as the National Observer of Places of Detention (NPM).

work on the **conceptualisation of the NPM** with the technical support of the APT. The process will be then opened up to consultation with other relevant actors from civil society. The committee has also decided to commission a **study to identify places of detention** in the country and the number of detainees. There are several mechanisms in place that conduct regular oversight of places of detention but these do not fully conform to the OPCAT and some do not have the credibility and capacity to take up the NPM mandate. The Convention against Torture (UNCAT) has not yet been domesticated in South Africa and this is one of the reasons for the delay in the ratification of OPCAT. A **Bill on the criminalisation of torture** has been drafted and will be presented to Cabinet in 2012. Many synergies exist to move the process of OPCAT ratification forward and the South African Human Rights Commission (SAHRC) has established a committee for this purpose. In fact, the mandate of the **Section 5 Committee of the SAHRC**, which includes relevant actors from civil society, is to lobby for the ratification of OPCAT and the criminalisation of torture in national law.

Togo

Togo **ratified the OPCAT after the Dakar Conference in July 2010**. Following this, a Follow-Up Committee on OPCAT implementation that included a wide range of relevant actors was established. The Follow-Up Committee undertook a **diagnostic study of existing oversight mechanisms** in order to assess their appropriateness to become NPM. On the basis of the conclusions of this study, it opted for the creation of a **new mechanism** to play the role of NPM and a Bill was drafted to that effect. However, the Council of Ministers, after studying the draft Bill, decided to allocate the NPM function to the **National Human Rights Commission of Togo**, even though it does not fully meet the OPCAT requirements. In making this decision, the government of Togo opted to use the existing experience of the Commission, which is already carrying out visits to places of detention, mainly in view of maximising existing resources. A Bill modifying the mandate of the NHRI has therefore been drafted by the Commission and it is under consideration.

Uganda

Uganda has **neither signed nor ratified the OPCAT** but there are numerous torture prevention initiatives in place. A **draft Bill criminalising torture**² is before parliament and it is anticipated that it will be passed in 2012. The criminalisation of torture has been seen in Uganda as a preliminary condition to the ratification of the OPCAT. Now that the criminalisation Bill is about to be adopted, it is **timely to push for ratification of the OPCAT**. The Uganda Human Rights Commission has a constitutional mandate to visit places of detention and these have already been mapped out. It is most likely that the Commission will be designated as NPM if Uganda ratifies.

² The Anti-torture Bill was adopted by Parliament on 26 April 2012. As of 17 July 2012, the Bill is awaiting for President Signature for its entry into force.

3. Interactive roundtable on the application of key points of the Dakar Action Plan

As previously mentioned, the Dakar Plan of Action was adopted with the aim of providing a practical instrument to be used to effectively implement the OPCAT in Africa. Stimulating critical discussions on the implementation of some of the key points of the Dakar Action Plan would therefore help in taking stock of positive and negative developments and identify possible ways forward accordingly. After introductory presentations, the roundtable discussed, debated and shared experience on the following issues:

- Ratification of the OPCAT and its implications;
- Development of the most appropriate NPM according to the national context;
- Effectiveness of the NPM's work;
- Importance of building a constructive dialogue with relevant authorities for the effectiveness of NPMs;
- Channels of cooperation between and interaction with national, regional and international actors towards the effectiveness of NPMs.

3.1 Introductory presentations

1. Ratification of OPCAT and its implications

Mr. Seydi Gassama, Executive Director of Amnesty International Senegal, spoke about the ratification of the OPCAT and its implications using Senegal as a case study. He began by stating that Senegal is one of those African countries that have ratified most international human rights treaties but the implementation of these treaties remains problematic. Even though Senegal was the first State to sign the OPCAT on 4 February 2003, the ratification was inordinately delayed due to concerns regarding the future implications on the financial and institutional setup of the State.

One of the good practices he shared is that the OPCAT ratification in Senegal was achieved in October 2006, following civil society engagement with various government officials through training and sensitisation seminars, the building of synergies and wide ranging consultations with a broad variety of actors.

However, after ratification, the problem of implementation arose, especially regarding the choice of an NPM. What mechanism would be suited to play this role? After a careful analysis of existing mechanisms which demonstrated their inappropriateness to take up the role of NPM, it was decided to create a completely new structure along the lines of the French model. In order to ensure that the law establishing this mechanism would conform with the OPCAT provisions, intensive lobbying and numerous consultations were undertaken with the strategic support

of the British Embassy as well as the technical assistance of the APT and the Office of the High Commissioner for Human Rights. Finally, a law instituting the National Observer of Places of Deprivation of Liberty which perfectly incorporated civil society's proposals was duly passed in 2009.

Unfortunately, the enabling decree of this law didn't benefit from the same kind of inclusive process and it was passed by the Government without consulting major stakeholders. As result, the decree watered down many of the gains made in the law. As a result, civil society gathered together again in order to provide some recommendations and comments on the decree.

The example of Senegal shows how important the constant pressure from civil society is when it comes to advocating for ratification and especially implementation of the OPCAT. For successful ratification and implementation to be achieved, it is crucial to ensure that all opportunities, big and small are seized. Campaigners must capitalize on any incident of torture to raise public awareness about the importance of preventing torture and the specific necessity of ratifying and implementing the OPCAT. For this to be achieved, the media must be fully involved and there must be synergy of action between civil society organizations, Government, Parliament, the diplomatic community and regional and international stakeholders.

2. The development of the most appropriate NPM according to the national context

Building on the experience on NPM establishment in Togo, **Ms Suzanne Soukoude**, magistrate in Togo and APT Board Member, outlined that any process of NPM designation must be inclusive, transparent and must involve an in-depth analysis of existing structures to determine their suitability to assume the role of NPM. She also emphasised the need to set up a specific structure that can follow up closely on the effective establishment of an NPM. In Togo for example, a Follow-up Committee was established with the purpose of supporting and assuring the right development of the designation process. A seminar was organised in order to give space for national debate bringing together various actors including civil society representatives, the media, and government officials. A study aimed at identifying and analysing existing monitoring mechanisms was also undertaken by the Follow-up Committee. On the basis of the findings of this study, it was decided that a new and separate structure would be the best option to carry out the functions of an NPM due to the difficulties to adapt existing institutions to the role of NPM.

This consultation has been a complex process. A number of difficulties have been encountered in relation to the choice of the best NPM option, especially where some stakeholders were showing some resistance that slowed down the whole process. Moreover, given that the establishment of NPMs and the prevention of

torture as a whole is not a priority for most governments, the lack of political will has also considerably delayed the designation of the NPM. Despite these obstacles, the process has impressively respected the principles of inclusiveness, participation and transparency, and its outcome has been recognized as the expression of a national consensus. Draft NPM legislation was also prepared and submitted to the Minister of Justice.

However, the Government opted to designate the National Human Rights Commission as the NPM for Togo. This has been explained as a consequence of different factors such as the general lack of technical, financial, material and human resources which are necessary for the effective functioning of a new institution. The decision has therefore been based on the practical need to maximise resources and find the less expensive way to meet the obligations under the OPCAT. However, this decision does not exempt the Government from ensuring additional resources to the National Human Rights Commission. In fact, NHRIs rarely already meet all the requirements of the OPCAT and amendments to legislation, organisational restructuring, additional human, logistical and financial resources are almost always needed.³

Togo's choice of designating the NHRI as NPM is part of a regional tendency that is emerging with regards to NPM designation in the continent. So far two out of the three established NPMs are NHRIs (Mauritius, Mali) and other NHRIs are supplying some of the NPM functions where an official mechanisms has not yet been established (e.g. Ghana, Uganda, Zambia). However, considering the current state of things, it seems that States are not doing enough to providing NHRIs with the necessary means and powers necessary to turn a NHRI into an effective NPM. States may wrongly assume that designation of an existing national human rights commission or Ombudsperson's office would be an expedient and inexpensive way to meet the obligation to have an NPM under the OPCAT. On the other hand, NHRIs may also believe they can discharge the NPM mandate without undertaking any substantial change. However, such existing institutions rarely already meet all the requirements of the OPCAT. Hence, any decision whether to designate a national human rights commission or Ombudsperson's office as the NPM under the OPCAT should only be taken after a careful and realistic assessment of the advantages and the disadvantages of the particular institution. Moreover, as stated in the Rabat Declaration of the Network of the African NHRIs, in cases where the NHRI emerges as the best choice as future NPM, the NHRI should conduct an in-depth self-assessment of its capacity to become an NPM and, if needed, advocate for the necessary adaptations.⁴

³ For further information on the issue consult the APT briefing National Human Rights Commissions and Ombudspersons' Offices / Ombudsmen as National Preventive Mechanisms under the Optional Protocol to the Convention against Torture (www.apr.ch).

⁴ Rabat Declaration "A continent united against torture" <http://www.apr.ch/region/africa/Rabat0911En.pdf>

The consultation process should not end with the choice of the institution which will take up the role of NPM, but the reflection should go on in order to make sure that the decision is actually the most appropriate and is followed by the necessary actions. As it is the case for Togo, even though the decision of designating the National Human Rights Commission seems to be definitive, a thorough assessment of the needed adaptations and additional resources should be done in order to allow the NHRI to work in accordance with the OPCAT requirements.

Ms. Soukoude concluded by suggesting that both lobbying for the prioritisation of NPM establishment and building synergies and frequent interaction between all relevant stakeholders are necessary for developing the most appropriate and effective NPM.

3. The effectiveness of the NPM's work

Ms. Kadidia Sangaré, Chairperson of the Human Rights Commission of Mali which has also been designated NPM, opened her remarks by recalling the provisions of Article 3 of the OPCAT which requires State Parties to “set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment”. She stated that African countries that have established NPMs have not taken up their responsibilities to set up effective NPMs that really contribute to the prevention of torture and not just another institution with limited resources and powers.

The challenges to the effectiveness of African NPMs result from either the lack of political will or support from the government, the lack of human, material and financial resources, or from the lack of independence and financial autonomy. For example, the Malian NHRI has no independent budget; it is linked to the budget of the Ministry of Justice. In order to be fully independent, the Commission should be provided not only an independent budget but also an ad-hoc and sufficient budget for the NPM activities.

The lack of financial autonomy hampers even the basic activities that an NPM should carry out, like visits to places of detention and the publication of reports. However, this is not enough and, in order to be effective, an NPM should also have technical competences and strategic vision. For this reason it is fundamental to set up a separate unit within the NHRI that can be trained and become specialized in the prevention of torture. The NPM mandate is much more focused and specific compared to the mandate of NHRIs; it is therefore important to ensure that those who carry out the NPM work are able to focus specifically on this work. In this way, the Malian NHRI has set up a specific sub-commission but, as it is facing the same challenges of the Commission as a whole, it is still struggling to conduct visits to places of detention from time to time without long term perspectives.

The Malian NPM is not receiving much external support either. Here within lies another challenge, namely, the lack of communication and cooperation between NPMs and international and regional bodies. In particular, the contacts with the SPT and the CPTA are almost non-existent. It is unknown whether there are exchanges with other NPMs from Africa or from other regions. The OPCAT Global Forum provided the first real opportunity for the Malian NPM to meet and exchange with other NPMs. The upcoming SPT visit to Mali will be the second big opportunity to establish constructive contacts with the NPM. The need for NPMs to share good practices and for international and regional bodies to develop recommendations for government in relation to NPMs is a real and pressing concern.

NPMs should also be granted access to the OPCAT Special Fund. This will allow them to find alternative resources if the governments are not providing the necessary resources. The current requirement that the State must have publicized the SPT report to apply to the Fund could be seen as an incentive for transparency but at the same time constitutes an obstacle for NPMs who are in need of resources.

Finally, Ms. Sangaré cited the misunderstanding of the OPCAT philosophy and mechanisms and the lack of coordination between relevant government actors as additional obstacles to the effectiveness of NPMs. She concluded by suggesting that advocacy, capacity building and awareness raising should target these challenges if the objective is to strengthen the existing African NPMs and ensuring the future NPMs will be able to implement their mandate.

4. The importance of building a constructive dialogue with relevant authorities for the effectiveness of NPMs

Ms. Roselyn Karugonjo-Segawa, Director of Monitoring and Inspections at the Uganda Human Rights Commission (UHRC), recalled that the UHRC has been undertaking visits to places of detention since it was established in 1996. As a result, it has been engaged in constructive dialogue with the authorities for fifteen years.

Given this experience and the particular relationship with the authorities that UHRC has developed, it is thought that it would be most likely that upon ratification of the OPCAT, the UHRC would assume the role of NPM. Ms Karugonjo-Segawa stated that because places of deprivation of liberty are naturally shielded from public scrutiny, constructive dialogue must be aimed at learning about what goes on in these places both from the perspective of the authorities as well as the perspective of those persons deprived of their liberty. Constructive dialogue can be formal or informal discussion but it should be led by the principle of objectivity and it should be based on mutual understanding. The right attitude that can help building trust and establish a connection is to show that you are willing to understand the authorities' perspective on the conditions in places of detention

and how things can be improved. The aim is dispelling any fears of bias that would make these authorities unwilling to cooperate during such visits. Showing respect for their position and following all security procedures is also fundamental.

The safety of the person undertaking such visits and the protection of persons deprived of their liberty are essential. Constructive dialogue must be in detainees' interest and everything must be done to shield them from exposure from retaliation for providing information. Making objective and accurate recommendations is key in building a relation of mutual respect. Denunciation of conditions in an accusatory way without highlighting any positive development will jeopardize any attempt to build constructive dialogue. Being persistent and consistent is also essential.

In the course of its work, the UHRC has identified some other elements which may impede the process of a constructive dialogue with the authorities. These include, conducting fragmented visits without any form of coordination or synergy of action, the lack of legal provisions on the prohibition of torture as well as the political and socio-economic environment. Ms Karugonjo-Segawa concluded by recommending that there is need for synergy in engaging with authorities responsible for places of detention since fragmented efforts do not yield any significant results. She also noted the importance of accurate findings, objectivity and credibility in reporting, and persistence and consistence of visits and engagements with the authorities.

5. The channels of cooperation and interaction with national, regional and international actors for the effectiveness of NPMs

Ms. Judith Cohen, Head of the Parliamentary and International Affairs Programme of the South African Human Rights Commission (SAHRC), spoke on the channels of cooperation between national, regional and international actors in the prevention of torture. She stated that the potential for torture to occur is always present everywhere, whether in developed or under-developed societies, and at all times, be it during peace times or when there is conflict. However, the reality of poverty and the failure of states to uphold the vast number of human rights make the need for building consensus on torture prevention more pressing.

Ms. Cohen emphasised that given the reality of torture on the continent, collaboration between national, regional and international stakeholders is imperative for purposes of information and experience-sharing, and undertaking joint activities. She stressed that States Parties, NPMs, NHRIs, the CPTA, the SPT and the Special Rapporteur on Torture need to closely collaborate to make the prevention of torture effective. She suggested that formal annual meetings should take place between the CPTA and the SPT aimed at sharing experiences and reinforcing capacities. She also advocated for the creation of an NPM network

and the formal recognition of NPMs by the SPT and the African Commission, with the latter affording NPMs the opportunity of having affiliate status. She also suggested the possibility of an annual meeting between NPMs, the SPT, and CPTA and the need to build alliances with refugees, faith-based organizations, and NHRIs as a means of creating broad synergies in torture prevention. She concluded by emphasizing the role of NHRIs in torture prevention, especially their role in pushing for the submission of State Party reports to international mechanisms, noting that reporting has hitherto been very weak.

3.2 Discussions

During the debate that followed these preliminary introductions, some key issues were highlighted and further discussed.

1. Lack of political will

Lack of political will was cited as the main cause of **NPM inefficiency** given the desire of most government to have some degree of control over the activities of NPMs. This control is sometimes exercised by not allowing financial autonomy or starving the NPM of resources. It was emphasized that a more appropriate way of tackling this challenge was to open up, from the very beginning, OPCAT consultations to government representatives, decision makers but also personnel of the police, gendarmes and prison services which are often accused of perpetrating acts of torture, alongside health officials. It was also suggested that OPCAT ratification and implementation could be achieved also by using also actors of international cooperation who can provide diplomatic support to ratification campaigns.

2. NPM establishment process and their functioning

In the implementation of the OPCAT, the issue of **NPM establishment** is a key one. It lays the foundations for an effective functioning of the institution. In this regard, participants emphasised the need for NPMs to be granted with all powers foreseen by the OPCAT; in particular the power to conduct regular visits to all places of deprivation of liberty, including psychiatric hospitals and refugee detention centres which are often overlooked. NPMs should also be endowed with the competence and capacity to open a frank, constructive, sustained and mutually respectful dialogue with authorities of places of deprivation of liberty and to make the effort to explain to them the OPCAT philosophy and the overall benefits of prevention.

It was noted that there is a **tendency in Africa** to structure NPMs in one of two ways: either the NPM mandate is given to existing NHRIs (Mauritius, Mali, Togo), or a completely new entity is created to act as NPM (Nigeria, Senegal, Benin). There are only four countries in Africa which have designated NPMs so far (Mauritius, Mali,

Nigeria and Senegal). However, most of them struggle with lack of independence, resources and legal powers. The overarching need for the region is therefore to evaluate the effectiveness of these mechanisms and elaborate realistic solutions based on the challenges that these mechanisms face. Even if there is no model to suit all circumstances, and each country needs to adopt a mechanism according to its particular needs and circumstances, it is true that crosscutting shortcomings do exist in the region.

Being an NHRI and an NPM at the same time could bring advantages but it could also create difficulties, in particular in relation to the specificity of the preventive approach. NHRIs do have a reactive mandate that allow them to denounce, document and investigate individual cases of torture. Do NPMs have the power to **react to allegations of torture**? Which kind of reaction? In the case of the Uganda Human Rights Commission – even though it is not an NPM – there are two separate units, one dealing with complaints and one with monitoring. If the same people that file individual complaints with the aim of prosecuting the perpetrators also conduct preventive monitoring, it will be much more difficult for them to obtain the trust from authorities and to build up that constructive dialogue that the OPCAT envisages. Participants generally agreed that an NPM should not take up individual cases, but rather focus on its preventive mandate. This does not mean that they should refrain from referring alleged cases to other competent bodies that will be able to process them in an appropriate way.

With the potential for **cooperation between NPMs and NHRIs** being enormous, it is clear that in cases where the NHRI is also NPM there is a need of further reflection on the balance of this double mandate, as expressed in the Rabat Declaration of the Network of African NHRI.

3. The NPM work, beyond detention monitoring

The fact that in Africa many acts of torture and cruel, inhuman and degrading treatment go unpunished or with a minimal punishment constitutes a pressing issue which undermines effective prevention of torture. In this regard, it was stressed that the **NPMs should go beyond their visiting mandate** and take a more pro-active role in torture prevention. This might include capacity building, awareness raising but also the power to take action, or work with the judicial system. Even if the NPMs are well resourced, the lack of prosecution, compensation and rehabilitation may affect its work. It is important to avoid the danger of reducing preventive interventions merely to visits, without giving weight to all other preventive approaches.

Some participants argued that one of the factors contributing to the scourge of torture is the non criminalisation of torture. In Africa, only few countries have domesticated

the UNCAT, including Madagascar, Senegal, and Cameroon. Since instruments like the UNCAT do not provide sanctions for acts of torture, a judge, in accordance with the principle of legality, cannot impose a sanction that is not provided for in a legal text. Other participants agreed that the lack of a strong legal framework on the prohibition of torture can weaken the prevention of torture, but the fact that only four countries have national laws criminalising torture shouldn't prevent law practitioners from using and referring to all the other legal provisions available, at international and regional levels, given that some of these provisions are self-executing and do not need specific national legislation. It is already said in some constitutions that treaties are part of the positive law. What is needed is guidance for legal practitioners on how to creatively use these texts (i.e. for lawyers to draw on international jurisprudence when they make arguments in domestic courts, to the extent that this is a viable strategy in a particular national system). In any case, all participants agreed on the need for a holistic approach to prevention incorporating repressive measures and redress; otherwise, OPCAT will be functioning on shaky grounds.

4. Training and capacity building

On the issue of training and capacity building, it was emphasised that there is an urgent need to integrate human rights training in the curricula of training schools for police, gendarmes, the army, penitentiary services and any other services in contact with persons deprived of their liberty. In this regard, a delegate from Nigeria indicated that a seminar to overhaul the curriculum of the Police Academy to incorporate human rights training will be organised in December in Nigeria 2012. It was also pointed out that Amnesty International has been involved in training police and prison officials because it has been realised that they are sometimes ignorant that their actions constitute torture.

5. Better interaction between NPM and regional and international actors

The **political leverage of international and regional actors** such as the SPT and the CPTA should be better used to engage with States on NPM establishment and to strengthen the NPMs. It was suggested that the SPT and the CPTA could better coordinate and combine efforts in view of improving the effective implementation of the OPCAT in Africa. In particular, the two bodies could try to exert a greater influence on the sensitive process of designation and establishment of NPMs, in order to ensure that the foundations for effective institutions are properly laid. They could also increase their exposure by taking joint positions on the effectiveness of existing NPMs, as the Committee against Torture did in relation to the NPMs of Moldova and Azerbaijan.⁵ In general, it was pointed out that the need for more

⁵ See Concluding Observations of the CAT on Moldova (CAT/C/MDA/CO/2) and Azerbaijan (CAT/C/AZE/CO/3).

coordination and cooperation between national, regional and international actors is real in order to make the OPCAT system work. Without the support of actors such as the SPT and the CPTA, NPMs in Africa will never be able to play the crucial role of catalyst for change that the OPCAT has afforded to them.

4. The comprehensive approach of the UN Special Rapporteur on Torture

Mr. Juan Mendez began his presentation by stating that prevention is not the main task of the Special Rapporteur on Torture (SRT) but it is an essential part of his broad mandate to fight against torture. The central task of the SRT is to investigate allegations of torture and ill-treatment and to bring them to light. But he also can invite States to offer remedies when violations have occurred. The SRT generates recommendations that are broader in scope than recommendations that impact an individual victim. This can be expected to help prevent the recurrence of similar episodes.

There are several international norms which guide the work of the Special Rapporteur and which are provided by the UNCAT and other international instruments. The first important norm is the **obligation to investigate, prosecute and punish** any act of torture perpetrated in any jurisdiction of the State. A single instance of torture gives rise to this obligation. The incident of torture does not have to be part of a widespread pattern (which in that case could constitute a crime against humanity). This norm is important because if torture goes unpunished then it will continue unabated leading to impunity. Impunity only breeds and generates more violations.

The second important norm is the principle of **non-refoulement**. States cannot send anyone back to a place where he or she could be tortured. This is an absolute prohibition. It does not matter if this is extradition, rendition, or extraordinary rendition. In the recent past, States have by-passed this prohibition through requests for diplomatic assurances. Various Rapporteurs have said that this obligation cannot be discharged through this process. The question of whether diplomatic assurances are valid or not needs to be further explored, but the instances where it has been used so far are not very promising. There are many rendition or extradition cases where assurance was given and the person is still tortured. Many States are now debating whether standards for diplomatic assurances should be established.

The third preventive norm is the **exclusionary rule** wherein States are obligated to declare inadmissible and exclude any evidence obtained through torture or ill-treatment. This norm is weak at international law as it only excludes evidence

obtained through statements, not other forms of evidence. Evidence obtained through a search, for example, would still be admissible, even though the person was tortured to get information. Moreover, although evidence obtained through torture may not be used in a trial against a person, it may be used for other purposes. For example, in counter terrorism cases, the information may be used to detain other people. It is important to remind States that they cannot use this evidence at all, even though it is not yet a clearly established principle at international law.

Mr. Mendez then looked at remedies for torture. The right to have a remedy is well established at international law. **Reparations to victims can contribute to prevention.** Victims should be engaged in designing the scheme of reparations, which may include apologies and publication of their plight so that public opinion understands the nature of torture.

One could also emphasise the writ of *habeas corpus*. The principles underlying this writ are binding on all States which have adopted the Universal Declaration of Human Rights and have signed the foundational treaties, such as the International Covenant on Civil and Political Rights. Other key rights relevant to preventing torture include the right to have the judiciary determine the validity of arrest speedily and the right to humane conditions of detention. Generally, torture happens in the first hours of arrest, and if the *habeas corpus* process takes a week to deliver up the arrested person, then may well be too late to prevent torture. Hence, States should establish their criminal procedure in a way that facilitates *habeas corpus*.

The **right to legal assistance** is an established right in human rights law. Although international human rights law does not specifically state that this right comes into operation from the moment of arrest, one could argue that this is necessary to prevent torture. Many countries have a system of preventive detention, “*garde à vue*”. It would be important to persuade States to amend these provisions so that any decision to detain a person in custody is taken by a judge before detaining person.

In terms of conditions of detention, the **UN Standard Minimum Rules for the Treatment of Prisoners** contains a list of very broad and very detailed rules which enable us to ascertain whether the conditions in detention constitute torture or cruel, inhuman or degrading treatment or punishment. This is a very authoritative set of rules, which should be used more frequently.

In regard to the mode and modality of arrest, there are basic rules for detention to be used by law enforcement bodies that establish what kind of force can be used in the context of arrest. Any force used beyond what is set out in the established guidelines results in the potential for of cruel, inhuman or degrading treatment or punishment.

Based on these international norms and standards, the SRT receives **individual complaints**, he examines them and then he acts on them by writing to the relevant State seeking response on facts and law. The communication is confidential at the beginning, but when it is finalised, then the SRT reports to the UN Human Rights Council (HRC). At this point, the document becomes public, and the SRT can make his views known about whether a violation has occurred, and what the State should do about it. If the government does respond, the SRT is obliged to publish this response in full.

The SRT also conducts **fact finding missions**. During these visits, the SRT meets with all the relevant authorities. The SRT insists on being able to visit prisons that he selects, and to visit every part of the prison, as well as the right to have private interviews with inmates of the SRT's choosing. Some States are not very open to allowing visits with all detainees. The visit culminates with a report, which is at first confidential and for the State only. The report is then submitted to the HRC and to the UN General Assembly where it is discussed among States.

The SRT also produce **thematic reports** on specific issues of torture or ill-treatment. In October 2011, the SRT presented a report on solitary confinement in detention. This issue is not well regulated at international law. If the solitary detention creates pain and suffering and amounts of cruel, inhuman or degrading treatment or punishment, then it is forbidden. But, it is difficult to establish at what point the treatment or punishment reaches this level. The purpose of the report was to generate discussion around this issue.

The SRT also releases **press statements in urgent cases** and does special appearances before the HRC and issues joint statements with other special procedures. The SRT tries to coordinate with other mechanisms on torture, such as the Committee Against Torture, the SPT and regional bodies. The SRT has met with the Special Procedures of the African Commission on Human and People's Rights on several occasions, but this cooperation is far from being institutionalized. The objective of the coordination is to share information, plans and strategies, and to divide the work among the different bodies in a coherent way.

The most important impact that a better **coordination and cooperation** could have, is a widespread and broad condemnation of torture. The repulsion of torture has been weakened by the concept of relativism – the idea that there are some circumstances in which torture should be tolerated. This relativism happens in public culture as well, and is one of the most difficult challenges for the work of the SRT and other mechanisms fighting torture. The recent fight against terrorism has developed a sense of inevitability of torture which can be overcome only by a powerful combination of efforts from different actors at different levels.

5. Towards a regional dynamic on the prevention of torture

The Dakar conference can be viewed as a milestone of the regional process on the prevention of torture that started with the adoption of the Robben Island Guidelines in 2002. In fact, the Dakar conference has generated momentum by facilitating an in-depth analysis and the elaboration of practical action points for an effective and comprehensive regional strategy on torture prevention. The Dakar Plan of Action constitutes the second regional set of substantive and concrete measures on torture prevention after the RIG and compliments it by focusing on the implementation of the OPCAT and the cooperation between different actors at different levels.

Point 8 of the Dakar Action Plan specifically focuses on this issue of cooperation by stressing the need to ensure **ongoing dialogue, establish partnerships and collaborations and create networks and interfaces**. These recommendations are addressed to all relevant national, regional, sub-regional actors, and are included at the end as a corollary of the whole Plan.

One and a half year after the adoption of the Dakar Action Plan, the cooperation on the prevention of torture in Africa is judged as still too weak to ensure an effective implementation at national level. In particular, it was noted that, despite the willingness to cooperate and the existence of several concrete recommendations in this regard,⁶ much more needs to be done.

The aim of this session was to assist discussions converge into concrete proposals of action. The idea was to give participants the opportunity to exchange more informally through group discussions on what they can do as individuals as well as institutions to turn the regional dynamic engaged by the Dakar conference into a more structured, coherent and cohesive movement on the prevention of torture in Africa.

The issue of the creation of a **regional network on the prevention of torture** emerged to be a possible way forward. Both working groups agreed that some kind of institutionalised platform of exchange is needed in order to ensure regular communication and effective cooperation between different actors. A network would help to strengthen one another, especially African NPMs, by facilitating circulation of good practices and lessons learnt. The network would also help to strengthen advocacy efforts. It would help provide a global voice and therefore more credibility and legitimacy. It could help to cushion those who speak out against torture on an individual level. It could also be motivating as it would create privileged ways of information and experience sharing amongst the different countries.

⁶ Reference is made to recommendations from the Cape Town conference on OPCAT implementation organised by Bristol University in 2008 as well as from the series of consultations on the cooperation between UN and regional mechanisms organised by the OHCHR.

Despite the general agreement on the need to establish a regional network and the advantages that this network would bring, a number of different issues was left open to further discussion, including the specific structure and functioning of the network, its membership, its specific objectives.

If some participants suggested that the network should only be open to NPMs, NHRIs and civil society, others affirmed that other relevant actors, such as government representatives, should also be allowed membership. These diverging views reflected a disagreement on whether to fuse the purposes of advocacy and experience sharing. If the network has to work as a coalition of forces that can put pressure on governments for the effective implementation of the OPCAT and other torture prevention measures, States representatives should not be part of the network. On the other hand, some participants thought that the presence of government representatives, and in particular specific focal points within ministries whose establishment was recommended during the Dakar conference, would serve the lobby and advocacy objective by facilitating constructive dialogue with authorities. The rationale behind this is that, since most of the African countries are focusing on advocacy around the OPCAT which implies participatory, transparent and inclusive processes of consultation, all the relevant actors, including key States representatives, should be involved in potential networks.

Something that participants agreed on was the role that the CPTA should play in relation to the network. Acknowledged as the only African mechanism with a great potential to contribute to the prevention of torture in the region, the CPTA should be seen as a strategic partner of the network rather than a mere member or coordinator. The political leverage of the CPTA was seen as necessary for the legitimacy and credibility of the network, and it was highlighted that this political leverage would be strengthened by the network if the CPTA did engage with it.

Another aspect participants agreed on is that any kind of regional network should be built on existing expertise and experience in order to avoid the useless proliferation of institutions and an ineffective use of resources. NHRIs are already part of a network, the Network of African National Human Rights Institutions (NANHRI). Since some of the established NPMs are also NHRIs and the regional trend indicates the likelihood of more in the future, perhaps one could draw on the expertise within this network to explore the prospect and extent of integrating the new network or sub-network of NPMs. It was highlighted that this would facilitate access of NPMs both to the UN and African human rights systems. It was also stressed that the cooperation between NPMs and NHRIs would benefit from this kind of synergy and would contribute to a better prevention of torture at a national level.



Narrative Report of the
Regional Roundtable for Africa,
APT Global Forum
Friday 11 November 2011

The Africa roundtable that took place on 11 November 2011 in the framework of the OPCAT Global Forum was an opportunity for furthering the discussions engaged in the consultative workshop on 9 November. It was thus seen by participants as a continuity of the latter and draw ways forward. It was also an opportunity to discuss the relevance for the region of issues debated during the thematic workshops of the Global Forum.

Therefore, after a brief presentation of the main issues discussed during the strategic consultative meeting for Africa, participants in the roundtable shared key issues that emerged during the Global Forum sessions and that they found of particular interest for the African context. They subsequently wrote down concrete proposals for common ways forward that they would commit to undertake as individuals, as institutions as well as a part of a possible African movement on the prevention of torture.

In relation to **OPCAT ratification and implementation campaigns**, there was a question about whether the objective of advocacy campaigns in the region should be to obtain the highest number of ratifications of the Optional Protocol to the UN Convention against Torture (OPCAT) or rather to focus only on countries where there is a potential for effective implementation. Participants agreed that a balance is needed and realistic decisions should be taken in relation to specific national contexts. The importance not to dissociate ratification from implementation was highlighted, given the very operational nature of the OPCAT itself.

Discussions highlighted the **role of regional human rights mechanisms**, such as the CPTA and the Special Rapporteur on Prisons and Conditions of Detention in Africa, as key in relation to the ratification and implementation of the OPCAT. In particular, it was noted that they are best placed not only to convince governments to ratify, but also in fulfilling the obligation to effectively implement what they have ratified. However, it was acknowledged that this potential role will remain unexploited if relevant national actors, especially civil society organisations, do not coordinate and share information with these mechanisms. This is essential in ensuring a proper **follow up at national level** and for making the recommendations of these regional mechanisms more powerful. On the other hand, it was recommended that the ACHPR should generally be more responsive to the voice of national actors that calls for its support and collaboration.

At present, the ACHPR has already started to call upon States presenting their periodic reports to ratify the OPCAT and to report on their progress with implementation. However, the States reports remain the main source of

information and NGOs do not usually **submit shadow reports to the African Commission on Human and Peoples' Rights (ACHPR)**. The NGO Forum which is organised in the framework of the ACHPR sessions is the only official space for interaction between NGOs and the regional mechanism. This was judged insufficient and other channels of communication and cooperation should be institutionalised.

At national level, participants recommended that civil society in cooperation with NHRIs should try to engage the widest variety of actors and involve them in the advocacy campaigns by forming **coalition of local actors**. These actors should include parliamentarians, journalists and law enforcement officials. It is important to create knowledge and awareness among these actors since the beginning of the campaigns in order to tear down fears and misconceptions.

At the international level, all kind of opportunities such as the Universal Periodic Review (UPR), the review of the Committee on the prevention of Torture (CAT), or the visits by the Working Group on Arbitrary Detention, should be used by national actors to promote the ratification and the implementation of the OPCAT. This would enable the linkages of **advocacy campaigns with other cross-cutting issues** and the promotion, for instance, the domestication of the United Nations Convention against Torture (UNCAT).

In general, more needs to be done to develop good arguments to convince States to prioritize the implementation of preventive measures, politically but also financially. In particular, more should be done in **demonstrating the political, social and economic costs of torture, and its corollary, the cost savings of torture prevention**, so that States can be persuaded to invest more in prevention. It is important to gather more concrete evidence on the effectiveness of preventive efforts and present it as an advantage for the State.

It was recommended that as soon as States start moving towards ratification, work should already start looking at what human, financial and technical resources are required to implement the OPCAT and to support the work of the NPMs.

***I*n relation to the effective implementation of the OPCAT, the confidentiality of the Sub-Committee on Prevention of Torture (SPT) reports** was identified as one of the main challenges. In particular, it was noted that confidentiality prevents relevant national actors from conducting proper follow up on the SPT recommendations, which ultimately weakens the implementation of recommendations.

It was recommended that the SPT revisit its confidentiality rules, especially in its relation with National Preventive Mechanisms (NPMs). Art. 16 of the OPCAT allows

the SPT to communicate its reports and recommendations to NPMs, if considered relevant. This derogation to confidentiality should be used in order to empower the NPMs and contribute to an effective follow up at national level.

Participants stressed on the need to strengthen the collaboration between African NPMs and the SPT. It was suggested that the **NPMs and SPT should keep a regular communication**, especially in relation to the challenges that African NPMs do face. The SPT should evaluate those challenges and elaborate **more adequate ways to provide assistance to NPMs**.

A good practice that could be replicated, including in other regions that was noted was the capacity building projects of the Council of Europe, which facilitates regular exchanges and mutual learning activities between European NPMs, the SPT and the European Committee for the Prevention of Torture (CPT).

Better interaction between NPMs and the SPT would increase the overall quality of NPM recommendations, by allowing the production of **more substantive and coherent recommendations** that would raise standards and avoid inconsistencies. This applies to recommendations of all other regional and international mechanisms. When drafting recommendations for the authorities, NPMs should be mindful of how these should be structured for maximum impact.

Participants also suggested that **NPMs should go beyond their visiting mandate and take a dynamic role** by conducting, for instance, thematic reports and visits, in the same way that UN Special Rapporteur on torture writes such reports and that the SPT is considering doing. Some thematic issues to consider include looking at ill-treatment during deportations and internally displaced people. In this regards, it was also suggested that NPMs could **take up individual cases as an illustrative example**.

Finally, the **role of civil society** in relation to the effective implementation of the OPCAT was highlighted. Civil society has a **crucial role to play in supporting NPMs but also in assessing their effectiveness** by acting as a watchdog. NPMs and NGOs should particularly join efforts in following up on recommendations resulting from both UN and African mechanisms.

In relation to achieving a more inclusive strategy for torture prevention, participants recommended that a more inclusive strategy should be adopted at two different levels: actors to be involved and places to be visited.

It was suggested that greater efforts need to be made to **involve the media in promoting awareness of torture prevention**, and publicise the findings and recommendations of the visiting mechanisms, when these are made public.

However, NPMs must be careful in using the media and should avoid any kind of manipulation that could jeopardise the constructive dialogue with authorities.

It was also recommended that an inclusive approach should involve victims, service users and former detainees. This means ensuring a **victim-centred approach** – as the one promoted by the Special Rapporteur on Torture – which focuses on persons, their rights, their needs and their role in stopping torture from occurring.

Participants noted that, even if the OPCAT covers all places of deprivation of liberty, most of the attention of visiting mechanism seems to be on visiting prisons, rather than on other places of detention. In Africa there are nuances related to the deprivation of liberty and therefore NPMs and the SPT should put more emphasis on visiting non-classical places of detention such as mental health institutions, immigration detention facilities, camps for the safety of witches, unofficial drug rehabilitation centres, circumcision schools, homes for the elderly and children, shelters for displaced refugees, and homes for the intellectually disabled. This should be regarded as a strength rather than as a challenge, as it opens the opportunity to bring more stakeholders on board in the fight against torture and respect for human dignity.

The issue of transfer and deportation is also crucial for the African context. It was noted that when foreigners are deported to the countries from which they came, the authorities need also to be aware of the conditions of the repatriation centres in which the deportees are likely to be held when they reach that country. It would be a violation of the UNCAT to deport an individual to a country where they are likely to be subject to torture or ill-treatment. NPMs and the SPT should therefore cover all these grey zones where abuses of torture and ill-treatment remain unknown and unpunished.



Conclusion, recommendations and ways forward

1. Conclusion

The strategic consultative meeting for Africa and the Africa roundtable which took place in November 2011 in the framework of the *OPCAT Global Forum* represent another milestone in the regional process on torture prevention that started with the adoption of the Robben Island Guidelines (RIG) in 2002 and that was boosted by the Dakar conference in April 2010.

The gathering not only increased the motivation of key actors in the promotion of torture prevention initiatives in the field, but has also built on the momentum generated by the Dakar conference by giving shape and substance to a more informed and oriented African discourse on torture prevention.

The main outcome of this event is a set of innovative recommendations for the way forward, summarised below, which have resulted from the frank discussions between participants. These recommendations need to be sustained by a fortified motivation to fight for their implementation.

This was confirmed by the regional consultation for Africa on the cooperation between UN and African human rights mechanisms on prevention of torture which was organised by the Office of the High Commissioner for Human Rights in Addis Ababa on 6-7 February 2012. Indeed, the recommendations made during the Global Forum have fed into ones made during this consultation.¹

2. Recommendations for furthering torture prevention in Africa

- **Independence of National Preventive Mechanisms (NPMs) must firstly be at a financial level.** An NPM can not be independent if it is not allowed financial autonomy and it does not receive adequate resources. International and regional human rights mechanisms should take a joint position on this and put more pressure on governments. On the other hand, NPMs should be proactive in raising funds (for example through the OPCAT Special Fund or external donors).
- **The issue of NPMs effectiveness should not be limited to the lack of material resources and means.** Preconditions for an NPM to be able to discharge its mandate are much broader and include a strong legal framework, adequate powers, transparent procedures and competences of members as compared to National Human Rights Institutions (NHRIs). All this should be taken into account when choosing between establishing a new institution

¹ For more information please visit http://www.apt.ch/index.php?option=com_k2&view=item&layout=item&id=1060&Itemid=270&lang=en

and designating an NHRI or any other visiting body. Even if the designation of NHRIs is seen as a solution to avoid the proliferation of State institutions, it is important that this does not happen without an adequate reflection on the adaptations needed.

- **Constructive dialogue must take place at different levels.** All concerned sectors need to be involved so that they understand what OPCAT is all about, and misconceptions are torn down. Local actors should take the initiative to establish national coalitions for advocacy campaigns on the ratification and implementation of the Optional Protocol to the UN Convention against Torture (OPCAT). It is important that these coalitions include, among others, civil society organisations, government representatives, high representatives of law enforcement sector, parliamentarians, journalists, victims' associations and former detainees.
- **Concrete channels and spaces of communication and cooperation between NPMs and regional and international mechanisms should be established.** African NPMs should seek and obtain access to the African Commission on Human and Peoples' Rights (ACHPR) as well as to the United Nations system, by asking for instance, for affiliated status with the ACHPR or by using existing channels such as the Network of African Human Rights Institutions. Annual meetings between African NPMs, the Committee on the Prevention of Torture in Africa (CPTA) and the Sub-Committee on Prevention of Torture (SPT) should be institutionalised.
- **Peer-to-peer exchanges between NPMs**, not only from Africa but also from other regions, should be encouraged. The idea of creating a regional network and adapting the Council of Europe NPM project to the African context should be further developed.
- **The CPTA and the SPT should develop a specific strategy to engage with African NPMs** (sharing information and recommendations, joint actions, etc.), to provide them with guidance and technical support, to evaluate and improve their functioning but also to be actively involved in NPM establishment process in order to ensure they are appropriately constituted.
- **Civil society organisations should strengthen their cooperation with NPMs**, by providing information, following up on NPMs' actions and recommendations, but also by playing the role of watchdog, observing and assessing the functioning of these mechanisms. Civil society should also facilitate the inclusion of victims in OPCAT implementation process.
- **The SPT should revisit its policy on confidentiality** and reflect on which elements of its work need to be confidential. Creative ways to engage with wider audiences, especially civil society, should be sought (for example, public debates, publication of a part of recommendations only).
- More research should be done on the **impact of the lack of criminalisation of torture on OPCAT implementation.**

3. Ways forward²

- 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.

² The ways forward are included in APT's Outcome report "**The Global Forum on the OPCAT – Preventing Torture, Upholding Dignity: From Pledges to Actions**", 2012, p. 61. See also the full summary under "**OPCAT in Africa: Ensuring Its Implementation**" (p. 59 to 62) as well as the section on global ways forward under "**From Pledges to Actions**", pp. 81 to 86.



ANNEXES

1. Annex I: Programme of the Strategic Consultative Meeting and the Regional Round Table for Africa



“People already have within them the wisdom and creativity to confront even the most difficult challenges.”

The World Café Community

One voice, multiple actions to prevent torture - Strategic consultative meeting on OPCAT for Africa 9 November 2011 – Geneva prior to the 10-11 November OPCAT Global Forum

PROGRAMME

Objectives:

- Encourage participants to prioritize the prevention of torture in their national agendas;
- Increase the commitment to advocate for OPCAT ratification and its effective implementation;
- Further the promotion of inclusive dialogue and joint efforts as means to deeply understand the OPCAT system and effectively implement it;
- Analyse regional trends and challenges on NPM establishment and discuss possible solutions based on the OPCAT provisions;
- Promote and facilitate the replication of best practices and the conversion of challenges into creative solutions;
- Converge national and regional synergies towards effective OPCAT implementation.

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|-------------|---|
| 8:30–9:00 | Registration of participants |
| 9:00–9:30 | <p>Session I: Welcome and Introduction to the meeting</p> <p>Welcome by Ms. Barbara Bernath, Chief of Operations, APT</p> <p>Introduction by Mr. Jean-Baptiste Niyizurugero, Africa Programme Officer, APT</p> <p>Objective: to present the rationale, the main objectives as well as the methodology of the meeting</p> |
| 9:30–10:30 | <p>Session II:</p> <p>Collective Brainstorming exercise on OPCAT dynamics in Africa</p> <p><i>Is Africa doing enough to make the OPCAT system work?</i></p> <p><i>Moderator: Ms. Lauretta Vivian Lamptey, Chairperson, Commission for Human Rights and Administrative Justice of Ghana</i></p> <p>Objective: to ice-break by an informal and open exchange of ideas on the overall situation of the OPCAT in Africa</p> |
| 10:30–11:00 | Coffee Break |
| 11:00–12:00 | <p>Session III: Interactive roundtable on the application of key points of the Dakar Action Plan</p> <p><i>Is the Dakar strategy receiving the necessary efforts and having the expected impact?</i></p> <p><i>Moderator: Mr. Mahamane Cissé Gouro, Head of the OHCHR Regional Office for West Africa</i></p> <p>Objective: to conduct an in-depth analysis by bringing the full experience and ideas of participants to bear on challenges and success related to the implementation of the Dakar Action Plan.</p> <p>Method: on the basis of the provisions of the Dakar Action Plan, discussion will be guided by some key questions related to the following topics:</p> <ul style="list-style-type: none"> • Ratification of the OPCAT and its implications: Introductory inputs by Mr. Seydi Gassama, Executive Director of Amnesty International Senegal (10 minutes) • The development of the most appropriate NPM according to the national context: Introductory inputs by Ms. Suzanne Soukoude, Judge, APT Board member (10 minutes) • The effectiveness of the NPM's work: Introductory inputs by Ms. Kadidia Sangaré, Chairperson, NPM-Human Rights Commission of Mali (10 minutes) <p>Questions and interactive discussion (30 minutes)</p> |
| 12:00–13:00 | <p>Session III: Continuation</p> <ul style="list-style-type: none"> • The importance to build a constructive dialogue with relevant authorities for the effectiveness of NPMs: introductory inputs by Ms. Roselyn Karugonjo Segawa, Director Monitoring and Inspections, Uganda Human Rights Commission (10 minutes) • The channels of cooperation between and interaction with national, regional and international actors for the effectiveness of NPMs (based on point 8 of the Dakar Action Plan): introductory inputs by Ms. Judith Cohen, Head of Programme: Parliamentary and International affairs, South Africa Human Rights Commission (10 minutes) <p>Questions and interactive discussion (30 minutes)</p> |

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| 13:00–14:30 | Lunch break |
| 14:30–15:45 | <p>Session IV: Working groups discussions</p> <p>Towards a regional dynamic for the prevention of torture</p> <p>Introduction by Mr. Juan Mendez, UN Special Rapporteur on torture</p> <p><i>Chair of the Anglophone group (1):</i> <i>Ms. Dupe Atoki, Chairperson of the ACHPR and Chair of the CPTA</i></p> <p><i>Chair of the Francophone group (2):</i> <i>Mr Koffi Afande, Legal Adviser, International Criminal Tribunal for Rwanda</i></p> <p><i>Rapporteur of group 1:</i> <i>Mr. Lawrence Amesu, Director, Amnesty International Ghana</i></p> <p><i>Rapporteur of group 2:</i> <i>Ms. Marie Gisèle Zinpke, Judge, Ministry of Justice of Benin</i></p> <p>Objective: to provide with a more favourable environment for creative solutions and constructive possibilities for action to emerge</p> <p>Method: On the basis of discussions from previous sessions, the groups' members are invited to elaborate on the following questions by sharing insights, ideas, discoveries and deeper questions as they emerge, in order to create a regional dynamic for torture prevention:</p> <ul style="list-style-type: none"> • Could a regional network on torture prevention contribute to a more effective OPCAT implementation and why? • How could the CPTA impulse and energize this torture prevention movement? Which kind of interaction between the CPTA and the Special Rapporteur on Prisons and Conditions of Detention (SRPCD) of the ACHPR for an effective torture prevention movement? • How can we, as individuals and institutions, contribute to the effective implementation of the OPCAT in the region? |
| 15:45–16:30 | <p>Session V: Active sharing for a common approach</p> <p>Reporting from group 1 (10 minutes)</p> <p>Reporting from group 2 (10 minutes)</p> <p>Discussion (20 minutes)</p> <p>Concluding observation by Mr. Med Kaggwa, Special Rapporteur on Prisons and Conditions of detention of the ACHPR and member of the CPTA</p> <p><i>Chair: Mr. Jean-Baptiste Niyizurugero, Africa Programme Officer, APT</i></p> <p>Objective: to share the main points touched during the groups' discussions in view of connecting ideas, growing collective knowledge in the perspective of defining more informed and integrated actions</p> |

**APT Global Forum on the OPCAT: Preventing torture,
 upholding dignity: from pledges to action**
Regional roundtable for Africa¹
Geneva, 11 November 2011 (14:15 – 16:15)

PROGRAMME

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| 14:15-14:45 | <p>Session I: Sum up of the main conclusions from the 9th of November meeting</p> <p>By Jean Baptiste Niyizurugero, Africa Programme Officer, APT</p> <p><i>Objective: to bring all participants, even those who didn't attend the 9th of November meeting, to the same level of understanding.</i></p> |
| 14:45-15:30 | <p>Session II: Interactive roundtable</p> <p><i>Moderator: Mr. Koffi Afande, Legal Adviser, International Criminal Tribunal for Rwanda</i></p> <p><i>Objective: to revisit and enrich the 9th of November discussions with additional key elements from the most relevant Global Forum thematic sessions in relation to the Dakar Action Plan, with particular focus on best practices:</i></p> <ul style="list-style-type: none"> • Ratification campaigns and implementation advocacy • NPM's effectiveness: how to make it work? • Investing in torture prevention • Getting recommendations implemented • Achieving a more inclusive strategy on torture prevention |
| 15:30-16:15 | <p>Session III: From discussion to action</p> <p><i>Moderator: Ms. Suzanne Soukoude, Judge, APT Board member</i></p> <p><i>Objective: to elaborate on the proposed ways forward in order for participants to come up with a collection of individual/institutional commitments to action under the same common perspective.</i></p> <p>Leading questions:</p> <ul style="list-style-type: none"> • How to turn these meetings into a real opportunity for change? • How can we, as individuals and institutions, contribute to the effective implementation of the OPCAT in our countries/ in the region? |

¹ It is understood that the regional roundtable for Africa is the continuity of the 9th of November strategic consultative meeting. The discussions emerged during the 9th of November as well as during the first day and a half day of the Forum will be brought to fruition through this interactive roundtable.

2. Annex II: List of participants

| Name | Function | Institution | Country |
|---------------------------|---|--|--------------|
| Mr. Afande Koffi | Legal Adviser | Head ICTR Office the Hague | Netherlands |
| Mr. Ameh Samson Sani | Chairman | NPM-National committee against torture | Nigeria |
| Mr. Amesu Lawrence | Director | Amnesty International | Ghana |
| Ms. Atoki Dupe | Chair | ACHPR-CPTA | Nigeria |
| Ms. Bernath Barbara | Chief of operations | APT | Switzerland |
| Mr. Bruneau Jean Philippe | Commissioner | Prisons Services | Mauritius |
| Mr. Cisse-Gouro Mahamane | Head | OHCHR West Africa | Senegal |
| Ms. Cohen Judith | Head of the Parliamentary and International Affairs Program | National Human rights Commission | South Africa |
| Ms. Dissel Amanda | APT country delegate | APT | South Africa |
| Mr. Gassama Seydi | Executive director | Amnesty International | Senegal |
| Mr. Ka Moustafa | Judge | Ministry of justice | Senegal |
| Mr. Kaggwa Med | Chair - Special Rapporteur on prisons - member CPTA | National Human Rights Commission - ACHPR | Uganda |

| | | | |
|--------------------------------|---|---|--------------|
| Mr. Kapito John | Chair | National Human rights commission | Malawi |
| Ms. Karugonjo Segawa Roselyn | Director monitoring and inspections | National Human rights Commission | Uganda |
| Mr. Ki-Zerbo Lazare | Programme Director | International Organisation of la Francophonie | France |
| Mr. Kodjo Gnambi Garba | Director of penitentiary administration | Ministry of justice | Togo |
| Mr. Koita Baba Bamariam | Chair | National Human Rights Commission | Mauritania |
| Ms. Kompaoré Christine | Technical Adviser | Ministry of Justice | Burkina Faso |
| Ms. Lamptey Laretta Vivian | Chair | Human Rights Commission | Ghana |
| Ms. Long Debra | Researcher | Bristol University | UK |
| Mr. Loubassou Christian | Vice Chairperson | ACAT | Congo |
| Mr. Mbuh Tem Fuh | CPTA coordinator | CPTA | Gambia |
| Ms. McKenzie Karen | Senior human rights adviser | Commonwealth | UK |
| Mr. Mendez Juan | Special Rapporteur on torture | UN | Argentina |
| Mr. Mensah Attoh Sylvain | Member | National Human Rights Commission | Togo |
| Mr. Minekpor Kokou | Director of legislation and protection | Ministry of Human Rights | Togo |
| Mr. Montcho Agbassa Eric Codjo | Teacher | University of Aborney-Calavi | Benin |

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|---------------------------------------|---|--|--------------|
| Ms. Nhlapo Pearl | State Law Advisor: International Legal Relations | Ministry of Justice and Constitutional development | South Africa |
| Mr. Niyizurugero Jean Baptiste | Africa Programme Officer | APT | Switzerland |
| Ms. Opara Ijeoma | Programme Director | Prisoners rehabilitation and welfare action | Nigeria |
| Ms. Paolazzi Ilaria | Africa Programme Adviser | APT | Switzerland |
| Mr. Rakotondravao Albert | Director of the police school | Ministry of interior | Madagascar |
| Ms. Razanadrakoto Marie Solange | Director General | Ministry of justice | Madagascar |
| Mr. Rudman Deon | Deputy Director General | Ministry of Justice and Constitutional development | South Africa |
| Ms. Sangaré Kadidia | Chair | NPM-National human rights commission | Mali |
| Ms. Soukoude Suzanne | Borad member | APT board | Togo |
| Mr. Toko Monkam Nestor | President | Droits et paix | Cameroon |
| Ms. Zinkpe Marie-Gisele | Judge, Responsible for the promotion of Human Rights | Ministry of justice | Benin |
| Ms. Zoma Lucienne | President | ACAT | Burkina Faso |
| Mr. Zongo Gaétan Fortuné | SPT Member (Africa Focal Point) | SPT | Burkina Faso |

