



**Commemorative Seminar on the 10th anniversary of the RIG
Enhancing torture prevention in Africa
21-23 August 2012, South Africa**

**Session 3: Monitoring places of detention as a means to prevent torture
Background paper on the situation of the OPCAT in Africa**

Introduction

More than thirty years ago, the concept of monitoring places of detention as a means to prevent torture and other forms of ill-treatment seemed to many a utopian dream. The last decade has been a seminal period for the prevention of torture in all regions of the world, including Africa. The concept of preventive detention monitoring gained ground and many States adopted the principle of conducting unannounced visits to places where persons are deprived of their liberty to deter any abuses and assess the risks of detainees being subjected to torture and other forms of ill-treatment. This “utopian dream” finally came to global fruition in the Optional Protocol to the UN Convention against Torture (OPCAT), which was adopted in 2002 and came into force in June 2006. It establishes a system of visits to all places of deprivation of liberty, by independent national and international bodies (National Preventive Mechanisms, or NPMs, and the UN Subcommittee on Prevention of Torture, or SPT).

In Africa, several important regional events have taken place over the last decade with consequences for preventive monitoring of detention. The adoption of the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines or RIG) in October 2002 by the African Commission on Human and Peoples’ Rights, is one of the key torture prevention achievements on the continent. The RIG established a precedent on the African continent and refers specifically to preventive measures, including preventive detention monitoring as conceptualised by the OPCAT.

The year 2012 is seen as a milestone in torture prevention initiatives in Africa with the 10th anniversary of the RIG. The APT and the African Commission on Human and Peoples’ Rights, in collaboration with the Office of the High Commissioner for Human Rights and the South African Human Rights Commission, took this opportunity to organise a commemorative seminar in order to reflect on how to enhance torture prevention in Africa. This paper aims to provide some background information on the OPCAT in Africa and to complement the discussions on monitoring places of detention as a means to prevent torture during the Commemorative Seminar.

1. The progress of the OPCAT on the African Continent (2002 – 2012)

This section reviews progress made on the African continent in relation to the OPCAT, with three key milestones:

- June 2006 (entry into force of the OPCAT)
- April 2010 (Dakar Regional Conference on torture prevention)
- August 2012 (10th anniversary of the adoption of the OPCAT and of the RIG)

Back in **June 2006**, there were only **3 African States Parties** to the OPCAT (Liberia, Mali and Mauritius) and **8 additional States Signatories** (Benin, Burkina Faso, Gabon, Guinea, Madagascar, Senegal, Sierra Leone and Togo).

By the time of APT's first Regional Conference on the OPCAT¹ in Dakar, Senegal, in **April 2010**, some progress had already been made. There were then **6 States Parties** to the OPCAT (with Benin, Nigeria and Senegal joining the OPCAT) and **8 additional States Signatories** to the OPCAT (Cameroon, Republic of Congo, Ghana, Guinea, Madagascar, Sierra Leone, South Africa and Zambia). However, very few States had actually implemented the OPCAT domestically: **only 4** of them had designated their **National Preventive Mechanisms** (Mali, Mauritius, Nigeria and Senegal), though none was actually operational (i.e. they were not conducting preventive monitoring of places of detention).

The Dakar Conference boosted the torture prevention dynamic in Africa and as a result the OPCAT began to take root around the continent. As of **August 2012**, there are now **10 States Parties** to the OPCAT (Benin, Burkina Faso, Democratic Republic of Congo, Gabon, Liberia, Mali, Mauritius, Nigeria, Senegal, Togo) and **9 additional States Signatories** (Cameroon, Cape Verde, Republic of Congo, Ghana, Guinea, Madagascar, Sierra Leone, South Africa and Zambia). Nevertheless, there is still no significant progress regarding the designation of NPMs as only 4 NPMs have officially been designated. However, most of these are now operational and several NPM designation processes are ongoing in at least 4 States Parties (Benin, Burkina Faso, Liberia and Togo) and in one State Signatory (South Africa).

The tenth anniversary of the adoption of the OPCAT and the RIG presents the ideal occasion to reflect on how preventive detention monitoring as promoted by the OPCAT has been taken up on the African continent. This paper takes stock of the impact of the OPCAT in Africa and reflects on the outcomes of the discussions held during the Strategic Consultative Meeting in Geneva and during the first Global Forum on the OPCAT, both organised by the APT in November 2011.

For any further information on the country examples mentioned in the paper, please refer to the APT OPCAT Database (only available in English: www.apr.ch/opcat).

2. The OPCAT in Africa: trends, challenges and perspectives

2.1 The UN Subcommittee on Prevention of Torture in Africa: role, operations and challenges

▪ Composition and internal organisation

The SPT comprises 25 independent experts, drawn from a wide range of regions, expertise and professional backgrounds. It is the largest treaty body in the UN system. Contrary to other treaty bodies, there is no requirement of a quota of experts by region. In 2010, for the first time, two African experts were appointed to the SPT. Elections will again be held in October 2012 providing States Parties with the opportunity to elect 12 members. As of August 2012, three candidates have been proposed by African States Parties, including one person for re-election.

¹ The OPCAT Project from the University of Bristol held a Regional Conference on the OPCAT in South Africa in 2008.

In 2011, the SPT set up four “regional focal points” to follow through the developments and progress of the OPCAT at the regional level. One of the African SPT members, Mr Fortuné Gaétan Zongo from Burkina Faso, is the focal point for the African region. It would be important to assess the impact of this new methodology on the cooperation between States Parties, NPMs and the SPT.

- **SPT in-country visits**

The SPT has conducted three in-country visits to Africa so far, whilst two visits are pending for 2012.

The SPT’s first-ever visit was conducted to **Mauritius** in 2007, which was selected by lot as provided for by the OPCAT. Subsequent visits to African countries have been selected following established criteria (including date of ratification; establishment of the NPM; regional monitoring bodies; complexity of the State; situation on the ground, etc.).

The SPT’s second African country visit took place to **Benin** in 2008 and the third was to **Mali** in 2011.

In 2012, the SPT will for the first time conduct two in-country visits to Africa in one year: a longer in-country visit to **Gabon** and a shorter visit to **Senegal** focusing on NPM developments.

At the end of 2012, half of the African States Parties would have been visited by the SPT.

- **Follow-up to visits and publications of SPT reports**

Of the three visits conducted so far by the SPT, only two reports have been sent to the respective governments (**Benin** and **Mauritius**). Benin is the only African State Party which decided to make the SPT report public², together with its responses³. Mauritius has maintained the confidentiality of its report, which has hindered following up on the recommendations made by the SPT and assessing any changes which may have been implemented in the country.

No follow-up visits have taken place in Africa thus far.

- **Engagement with National Preventive Mechanisms**

In previous years, the SPT adopted the practice of inviting NPM members to interact with them during their sessions in Geneva. However, as far as the APT is aware, no NPM representatives from Africa have had the opportunity to interact formally with the SPT members, possibly due to a lack of resources and financial means. Other means of communication need to be explored in the future to enable distant participation, such as through Skype conversation.

² See Subcommittee on Prevention of Torture, Report on the visit of the SPT to Benin, UN.Doc CAT/OP/BEN/1, 15 March 2011.

³ See Subcommittee on Prevention of Torture, Replies of the Republic of Benin to the recommendations and requests for information made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in its report on its first visit to Benin, UN.Doc CAT/OP/BEN/1/Add 1, 21 March 2011.

2.2 The OPCAT Special Fund: a potential ally in the implementation of the OPCAT

The OPCAT Special Fund was established under the OPCAT to help finance educational programmes run by NPMs and the implementation of recommendations made by the SPT after a visit. The OPCAT Special Fund has been operational since 2012 and for the first call for proposals (2011) only those States Parties which had received a visit by the SPT and who had requested the SPT to make the report public were eligible for application. Thus, in the case of Africa, only projects related to the implementation of SPT recommendations in **Benin** were relevant.

Publication of SPT visit reports not only demonstrates a spirit of transparency and openness in detention but also opens the door to potential financial assistance to decrease the risk of torture and ill-treatment. This has been widely acknowledged by African actors during the Strategic Meeting on OPCAT in Africa which took place in Geneva in November 2011, in the margins of the OPCAT Global Forum.⁴

2.3 National Preventive Mechanisms in Africa: from designation to effectiveness – the struggle for making a difference in torture prevention

A trend has emerged in Africa to establish a NPM in one of two ways: either the mandate is given to an existing National Human Rights Commission (Mauritius and Mali) or a completely new institution is created to perform the NPM functions (Senegal and Nigeria). While Togo is currently considering designating its National Human Rights Commission as NPM, in Benin there was consensus to establish a new and specialised agency on torture prevention. However, no legislation has yet been adopted in either country to confirm these decisions.

- **NPM designation process: common challenges**

Only four of the ten States Parties to the OPCAT have officially designated their NPMs, despite the OPCAT obligation that NPM designation should take place within one year of ratification. In reality, NPM designation and establishment in Africa do take more than one year. During the Strategic Consultative Meeting on the OPCAT in Africa, national and regional African actors reported that there are **significant delays** in the process of designation and establishment of NPMs. The power of some individuals and resistance of decision-makers were mentioned as possible reasons for delays. It was pointed out that many African States lack the political will to implement international human rights treaties domestically, and there is often an attempt to control the activities of the NPM (through failing to allocate sufficient funding, for instance).

Furthermore, despite the SPT guidelines calling for an “open, transparent and inclusive process which involves a wide range of stakeholders, including civil society” to designate the most appropriate NPM⁵, there is generally a **lack of consultation** on the NPM structure⁶ or a lack of respect for the final outcomes of the consultation process⁷. The

⁴ See APT, “**One voice, multiple actions to prevent torture in Africa**”, Report of the Strategic Consultative Meeting on the OPCAT in Africa and the Regional Roundtable held in the framework on the OPCAT Global Forum, Geneva, 9 and 11 November 2011.

⁵ SPT, Guidelines on national preventive mechanisms, UN. Doc CAT/OP/12/5, 9 December 2010.

⁶ For instance, in Mauritius there was no consultation with civil society organisations and other actors prior to introducing the recent NPM legislation designating the Human Rights Commission in Parliament.

decision to designate a NPM is not always based on a broad consultation and a contextual assessment of the situation.

Only half of the officially designated NPMs enjoy a strong **legal framework**. In **Mauritius**, a specific and separate NPM legislation was recently adopted to grant additional powers and guarantees to the Human Rights Commission. In **Senegal**, the National Observer of Places of Deprivation of Liberty has been created by law. The Human Rights Commission of **Mali** has been established by law but no specific reference has been made to the OPCAT and its founding legislation falls short of the OPCAT requirements. In **Nigeria**, the National Committee against Torture was established by a decree of the Federal Department of Justice. Nevertheless, legislation regarding NPMs in several countries is currently being discussed, including in Benin, South Africa and Togo. The Mauritius example demonstrates that NPM legislation can be adopted or reviewed and strengthened even several years after an official designation.

- **The struggle to be operational and effective**

Once designated, the NPMs face several serious challenges regarding their operations and impact. The Global Forum on the OPCAT illustrated that these challenges are common to the majority of the NPMs, highlighting the need to share experiences of how these challenges may be overcome in order to make NPMs more effective.

In some countries, such as Senegal, despite the adoption of national legislation establishing a NPM, there were serious **delays in appointing the mandate holders** resulting in delays in the operation of the NPM.⁸

According to APT's information, only half of the officially designated NPMs are now operational and are conducting visits to places of detention (Senegal and Mali). NPMs often lack financial, material and human resources and their impact is thus hindered by those **operational challenges**. Where National Human Rights Commissions have been designated as NPM (Mali and Mauritius), the NPMs' operations are constrained by the general challenges facing Human Rights Commissions – typically the lack of resources for the implementation of their general mandate. There is often a lack of understanding that additional resources specifically for the NPM are required to fulfil the OPCAT mandate. So far, it appears that many decision-makers have failed to appreciate this requirement when designating an existing institution as NPM. A further challenge is how NPMs should respond to individual complaints of torture and ill-treatment.

In addition to the **lack of resources** – which is a challenge shared by the majority of NPMs in the world – there still exist some resistance and **misunderstanding of the OPCAT** philosophy by government officials: for instance, regarding the need to enter into cooperative dialogue with the NPM and provide unfettered access to all places of detention. This has become an obstacle for NPM effectiveness, as reported by the Human Rights Commission of Mali.⁹ These challenges relating to misconceptions and

⁷ For instance, after a two-year process of consultation involving a wide range of actors, a consensus emerged in Togo to establish a new and specialised agency on torture prevention. A proposal was made to the Government which finally decided to designate the National Human Rights Commission as the NPM. See APT, “**One voice, multiple actions to prevent torture in Africa**”, Report of the Strategic Consultative Meeting on the OPCAT in Africa and the Regional Roundtable held in the framework on the OPCAT Global Forum, Geneva, 9 and 11 November 2011, for further information on the process.

⁸ The NPM legislation in Senegal was adopted in March 2009 and the mandate holder was appointed almost three years later (January 2012).

⁹ As reported on during the Strategic Consultative Meeting in Africa in November 2011

misunderstandings of the OPCAT approach and the role of the NPMs are common to the majority of NPMs. There is clearly a strong need to raise awareness on the NPMs' mandate, powers and role, especially during the first years of operations.

Finally, unlike other NPMs in the European, Asian and Americas regions, the African NPMs' visits are mostly focused on **“traditional” places of detention** (such as police stations and prisons). This is mostly due to the lack of expertise and financial resources allowing for visits to other places of detention (such as mental health institutions, immigration detention centres, etc.), as required by the OPCAT. There is a need to develop capacity to visit other places of detention in the future.

2.4. Perspectives

In Africa, there remains a challenge to ensure that domestic implementation results in short and long-term improvements in conditions and treatment in detention. This requires the thorough analysis of conditions and treatment, the making of strong recommendations, as well as time, resilience and patience to advocate for the implementation of these recommendations.

A constant pressure from civil society and human rights actors is needed to ensure change occurs. A synergy of action with non traditional human rights actors (media, parliamentarians, diplomatic community, etc.) is also required to keep the OPCAT on the political agenda and for it to remain a priority for decision-makers so as ensure the establishment of the NPM and its good functioning.

Exchanges of experiences amongst NPMs (not only African) have proven to be extremely useful in order to avoid certain obstacles and identify possible solutions. For instance, the OPCAT Global Forum was the first gathering where the Malian NPM representative was able to meet with other NPMs to share experiences. This peer-to-peer exchange is also a powerful means of strengthening the NPM's knowledge, practices and understanding of their mandate. The Senegalese NPM recently conducted a study visit to France to learn from the French NPM's experience, and to witness a full visit to a place of detention.

The political leverage of the SPT and the CPTA has to be further explored in relation to OPCAT implementation. Both regional and international bodies could have greater impact, in particular through activating national processes of NPM designation or insisting on the need for NPMs to be granted sufficient human, financial and logistical resources in order to be effective.

4. Next steps: what to do now?

- Monitor and document the implementation of the initial African NPMs in order to understand the challenges to effective functioning. Use information gathered through this process to support and to advocate for immediate steps to be taken to remedy these challenges. It is through sharing these lessons that other countries will be able to avoid similar pitfalls and implement their own NPM more effectively.
- Establish a network of African actors working on torture prevention to facilitate the exchange of good practice;
- Ensure that more African experts are represented within the Subcommittee on Prevention of Torture;

- Share practices and strategies on how to overcome obstacles through specialised publications and tools;
- Raise awareness on common challenges faced by African States when it comes to implementing torture prevention strategies and preventive monitoring in order to find creative and innovative solutions.

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Annex 1. OPCAT Global Status in Africa

- 10 States Parties in Africa
- 9 States Signatories in Africa
- 4 NPMs designated
- 3 SPT visits conducted, 2 visits planned in 2012

Country	Date of ratification / accession / signature	NPM designated	SPT In-Country Visit
10 States Parties		4 NPMs	
Benin	20 September 2006		Conducted in 2008, report and response from the State are public
Burkina Faso	7 July 2010		
Democratic Republic of Congo	23 September 2010		Planned in 2012
Gabon	22 September 2010		
Liberia	22 September 2004		
Mali	12 May 2005	National Human Rights Commission (operational)	
Mauritius	21 June 2005	National Human Rights Commission	Conducted in 2007. Report and response from the State are still confidential
Nigeria	27 July 2009	National Committee on Torture	
Senegal	18 October 2006	National Observer of the Places of Deprivation of Liberty (operational)	Advisory visit on NPM planned for 2012
Togo	20 July 2010		

9 States Signatories

Cameroon	15 December 2009
Cape Verde	26 September 2011
Congo (Republic of)	29 September 2008
Ghana	06 November 2006
Guinea	16 September 2005
Madagascar	24 September 2003
Sierra Leone	26 September 2003
South Africa	20 September 2006
Zambia	27 September 2010