Putting prevention into practice

10 years on: the Optional Protocol to the UN Convention against Torture

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

Avec le soutien de la
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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 the prevention of torture. 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 (OPCAT) and National Preventive Mechanisms.

The APT's vision is a torture free world where the rights and dignity of all persons deprived of liberty are respected.

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Acknowledgements

This booklet concludes a year-long campaign to mark the 10th anniversary of the entry-into-force of the Optional Protocol to the UN Convention against Torture – the OPCAT. The APT sees this anniversary as an opportunity to highlight the many positive changes achieved over the past decade, thanks to the OPCAT but, in particular, thanks to the work of National Preventive Mechanisms.

In early 2016, we therefore reached out to NPMs and relevant civil society organisations with a short questionnaire, asking them to identify examples of changes that have occurred as a result of their work under the OPCAT. We were overwhelmed by the positive response and the many concrete examples of impact and strengthened protection for persons deprived of their liberty around the world. This booklet only includes a few examples of the testimonies we received – many more can be found on our special OPCAT anniversary website: http://opcat10.apt.ch

The APT would like to thank all NPMs, as well as the individuals who have contributed with their stories to this booklet.

Within the APT, many people have contributed to the realisation of this booklet. The APT would especially like to thank Veronica Filippeschi, who led and coordinated the OPCAT anniversary campaign and who worked closely with the different contributors to draft the contents. She was assisted by Jean-Sébastien Blanc, Rosita Ericsson, Shazeera Zawawi, Sylvia Dias, Yasmine Shams, among many others.

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Mark Thomson
Secretary General

Realising the full potential of the global torture prevention system

In 1976, Jean-Jacques Gautier, the founder of the Association for the Prevention of Torture, proposed to open-up the closed world of detention to independent and external scrutiny. In other words, he believed that it was possible to reduce the risks of torture and other ill-treatment by replacing the culture of secrecy, often predominant in detention, by a culture of transparency.

Would States ever agree to let outsiders into their places of detention? At the time, his idea was considered by many as completely utopian. But, on 18 December 2002, the United Nations General Assembly adopted the Optional Protocol to the UN Convention against Torture (OPCAT), establishing the global system that Gautier had proposed. The treaty entered into force on 22 June 2006. In only ten years, 83 States have ratified or acceded to this innovative treaty and 64 of them have set-up National Preventive Mechanisms (NPM) – domestic bodies established under the OPCAT to prevent torture and ill-treatment. An international body, the UN Subcommittee on Prevention of Torture, has also been created under the treaty, working to prevent torture and ill-treatment worldwide.

Five years ago, at the Global Forum on the OPCAT, organised by the APT, it was already very clear that this global system for preventing torture had a huge potential to make a real difference. The identity of the OPCAT system as a whole has grown over the years. Today, States parties, NPMs, the SPT, but also all other actors playing a role in this system, have developed a sense of belonging to a global community, where they exchange experiences, cooperate and reinforce each other.

A number of challenges still remain. In Africa, the region with the largest number of OPCAT States parties after Europe and Central Asia, implementation is still very limited. Most States parties have not yet set-up their NPMs and the few existing NPMs are not fully operational and often suffer from a lack of adequate resources

and expertise. In the Asia-Pacific, there is still resistance from many authorities to join the OPCAT system and open their places of detention to independent monitoring. In the Middle East and North Africa, although the number of States parties is still very limited, political changes in recent years have led to important developments, particularly regarding the setting-up of NPMs. The challenge is now for them to get started and implement their preventive mandate. In Europe and Central Asia and in Latin America, most of the States are parties to the treaty and have established their NPMs. However, these are often under-resourced and face challenges in getting their recommendations implemented by the authorities.

Despite the challenges still ahead, it is impressive to see the actual changes that the OPCAT has helped to achieve. This booklet offers a snapshot of OPCAT achievements during the last decade, and is not meant to be exhaustive. It provides an insight into what the prevention of torture and other ill-treatment means in practice, from the perspective of those directly involved: State authorities, the SPT, NPMs, civil society and persons deprived of liberty. The stories were selected on the basis of the diversity of geographical contexts, institutions and individual actors, thematic areas and stages of OPCAT implementation. It is always difficult to attribute changes to a single intervention and institution, as we know that the prevention of torture is a shared responsibility and requires a combination of measures to be truly effective. However, we believe that the stories told can provide an illustration of how the OPCAT has contributed in practice to prevent torture and other ill-treatment.

Some of the stories focus on how the OPCAT has contributed to develop a culture of transparency in places of detention. Ten years after the OPCAT entered into force, the simple fact that States have provided external and independent experts with access to their places of detention, on a regular and unannounced basis,

is a remarkable achievement in itself. Many places, where there was no external oversight before, have been increasingly monitored by OPCAT bodies. Even in those contexts where places were already subject to scrutiny, the work of NPMs has contributed to ensuring a more comprehensive and coherent monitoring system is in place. Other stories show that prevention is possible thanks to the sustained and constructive – but critical – dialogue and cooperation between State authorities, the SPT and NPMs, but also with civil society. This creates a constructive climate for finding solutions to the causes of torture and other ill-treatment.

Many of the stories told in the booklet illustrate how the OPCAT monitoring bodies, in particular NPMs, have contributed to better protecting the rights of persons deprived of liberty, by helping to improve conditions, develop safeguards and oversee their implementation in practice. Their holistic approach allows them to analyse and address the whole range of factors that might lead to torture and other ill-treatment, both identified within places of detention and related to public policies and legislation. Through their work, OPCAT bodies have helped to shed light on the risks faced by persons in situations of vulnerability, such as children, women, LGBTI persons, persons with disabilities, and migrants. In a world which still tries to justify the use of torture and other ill-treatment in the name of fighting terrorism and responding to states of emergency, and where political decisions are often influenced by public perceptions, NPMs have demonstrated that they can play a very important role in placing controversial issues on the public agenda and changing perceptions towards persons deprived of their liberty.

In order for these achievements to be sustainable, there is a need for continuous, long-term and coordinated efforts. It is therefore time to renew everyone's commitment to the effective implementation of the OPCAT and the global system to prevent torture and other ill-treatment.

Photo: SPT

GLOBAL SYSTEM. Transparency, dialogue, preventive approach, international and national monitoring bodies: the unique features of the OPCAT global system to prevent torture and other ill-treatment.

UN Subcommittee on Prevention of Torture: The first ten years

Malcolm Evans
Chairperson of the UN Subcommittee on Prevention of Torture

The UN Subcommittee on Prevention of Torture (SPT) is a new kind of treaty body in the United Nations human rights system, with a preventive and proactive mandate based on sustained cooperation. The SPT conducts visits to any place of detention in any State party to the OPCAT and makes confidential recommendations to authorities to better prevent torture and other ill-treatment. It also provides advice to States and National Preventive Mechanisms, within and beyond its official visits.

'The OPCAT has helped refocus thinking on how best to ensure that everyone enjoys their rights by trying to stop violations happening in the first place'

Ten years on from the entry into force of the OPCAT, and the establishment of the SPT, it is good to step back and take stock. As Chair, one tends to become rather obsessed with the 'next pressing problem' – and this means that one tends to think about problems, not achievements. Yet when one reflects on the first ten years of the OPCAT and the SPT, there is an incredible story of achievement to be told.

The OPCAT is unique. No other international human rights instrument creates an international visiting mechanism with so powerful a mandate – to go whenever it wishes to wherever it wishes; to see what it wishes; to speak with whomever it wishes and to say what it wishes, concerning the situation of anyone detained under the auspices of officialdom. And, in addition, requiring the establishment of national mechanisms similarly empowered, and empowering the SPT to work with states to ensure this happens and with the national mechanisms to help them

in their work. Being unique, and being uniquely powerful, brings with it unique problems, and much of the first ten years has really been about recognising and working to realise the potential of the OPCAT system.

Some of the achievements are clear. With over 80 states parties from all regions of the world, the OPCAT is now established as a central component of the global human rights system. Around 65 NPMs are now designated, and their work injects a level of independent scrutiny and transparency into detention systems in many countries where previously there was nothing of the kind. The SPT has been able to increase its own number of visits from around 3 per year to around ten per year, making it possibly the most active international visiting body in the UN human rights system. Moreover, the SPT has proven that it is possible to insist on the full exercise of its mandate, even in situations where it does not appear to have been fully understood or accepted. These are all very real achievements.

However, there have been other equally important achievements that are perhaps less obvious. The first concerns the idea of prevention itself. Much human rights work has traditionally focussed on holding perpetrators to account, ensuring that there is accountability and that victims can have remedies and redress. All this is very important – but the OPCAT has helped refocus thinking on how best to ensure that everyone enjoys their rights by trying to stop violations happening in the first place. Through the work of the SPT, the language and approaches of prevention are becoming more common within the international human rights community.

UN SUBCOMMITTEE ON PREVENTION OF TORTURE

- Started to work in February 2007
- Composed of 25 independent experts from different regions, elected by States Parties to the OPCAT
- Made 51 visits to 42 countries conducted between 2007 and 2016
- Developed guidelines and tools for NPMs and States parties, as well as policies and papers on specific themes

But what does working preventively mean? Refining the nature of preventive visiting within the UN system has been a second major achievement. For the SPT, this means focussing on what can actually be done in a particular situation to improve the situation and lessen the likelihood of ill-treatment. It is not just about standard setting and compliance. It is about trying to understand what is really taking place, what is really driving a situation and what – practically – can be done to address it. It is about making recommendations which will make a difference; practical suggestions that can be implemented – not requests that violations do not occur. This requires innovation and 'lateral thinking'. It also means working contextually and not overly focusing on abstract concerns about 'consistency': what might work in one case just might not work in another. The question, always, should be 'what best might help prevent torture and ill-treatment here and now'.

A third achievement has been to establish that effective prevention means working constructively with others, be they those authorities who are responsible for running places of detention, national officials responsible for systems of justice, civil society, other international bodies and agencies and, of course, the national preventive mechanisms. One of the biggest challenges which the SPT has had to overcome has been to counter the perception that, as an international human rights body, our role is to investigate and denounce. It is not. It is to observe, to seek to understand, to reflect, to recommend and to engage in dialogue in order to try to bring about effective and meaningful change.

It has taken ten years of operational practice for the SPT to consolidate its preventive approach, win acceptance of it and develop practical means for putting it into operation. This has been done – and others are now seeking inspiration from the way in which the SPT has gone about its work. Perhaps edging the architecture of human rights protection towards prevention based on practical co-operation may prove in time to be the SPT's greatest achievement yet.

Photo: CGLPL

COLLECTIVE EFFORTS. The new NPM mandate has expanded the coverage of independent monitoring across the United Kingdom and strengthened coordinated work and approaches on important detention issues.

Influencing detention policy through collective efforts

National Preventive Mechanism, United Kingdom

Made up of 20 different independent bodies, both lay and professional, the National Preventive Mechanism (NPM) of the United Kingdom of Great Britain and Northern Ireland has a unique character, taking into account that many detention settings were already monitored before the UK ratified the OPCAT, and the different political, legal and administrative systems in place in the four nations that comprise the UK. The institutional framework for oversight of places of detention long pre-date OPCAT. However, the new NPM responsibilities have strengthened collaboration between the different NPM bodies, filled gaps and increased consistency in monitoring the treatment and conditions of persons deprived of liberty across the UK.

'The UK NPM decided to take forward its work to protect any person deprived of liberty from sanctions'

Since its designation in 2009, one of the UK NPM's priorities has been ensuring that all places of detention are subject to independent monitoring. This has resulted in strengthening and extending its coverage of court cells, escorts and deportations, medium secure units for children and young people, and 'non-designated' police cells.

One of the challenges of an NPM with 20 members is to be consistent in its monitoring. To do this, the UK NPM has focused on specific issues of concern, for example de facto detention. The NPM identified a concern that those bodies monitoring places of detention may neglect to consider individuals who are de

facto detained in health and social care settings but also in other places, i.e., individuals who are not formally detained by law and do not have access to proper processes for reviewing the legality and necessity of their deprivation of liberty. General acceptance by professionals, carers and the public that such de facto detention is acceptable for some individuals because they cannot exercise choice may further jeopardise their human rights.

As a result, the NPM set up a specific working group which carried out an exercise to monitor the use of de facto detention through the collection of case studies for analysis from across the work of NPM members. This piece of work helped to: build an understanding of the issue; identify safeguards in place for those facing de facto detention, compare these to the safeguards in formal detention settings; and see where there may be gaps.

More recently, the NPM has conducted a joint project examining how isolation and solitary confinement are used across all detention settings in the UK. The NPM published the first ever report using common criteria to assess practices and procedures in prisons, immigration detention, health settings, police and court custody and places where children are detained. This report identified a range of overarching and specific concerns and some good practice. Following on from this report, NPM members are finalising comprehensive guidance on monitoring the use of isolation in detention with a view to strengthening their own practice and influencing detention policy.

UNITED KINGDOM

- OPCAT ratification: 10 December 2003
- NPM designation: 31 March 2009

National Preventive Mechanism:

- Multi-body model with 20 statutory bodies (originally 18), coordinated by Her Majesty's Inspectorate of Prisons for England and Wales
- Made up of lay and professional bodies
- Working since 2009
- Each individual body with specific competence on types of detention settings and jurisdictions
- Includes members whose scope is broader than detention

Protecting persons deprived of liberty from sanctions

In autumn 2013, following discussion about obligations arising from OPCAT, the UK NPM decided to take forward its work to protect any person deprived of liberty from sanctions. As a result, two NPM members, Her Majesty's Inspectorate of Prisons for England and Wales and the Independent Monitoring Board National Council, are now implementing a protocol that sets out the actions they will take to protect any person deprived of liberty from sanctions or other prejudice arising from their, or someone acting on their behalf's, contact with these NPM bodies.

The creation of this protocol has resulted in the identification of a number of allegations of sanctions. In each of these cases, the protocol has guided follow up to ensure NPM members take appropriate action. In some cases the allegations have proven to be false, and in some cases they have been upheld and the establishment has been held to account for their actions. This work has inspired other NPM members to adopt similar protocols or procedures and to raise awareness among monitors of the importance of protecting persons deprived of liberty from any harm as a result of their work.

Photo: Ministry of Justice and Peace, Costa Rica

DIALOGUE. Constructive and regular dialogue between the NPM and the authorities is key to placing important issues on the government agenda and to generating changes in policies and practices.

Better government decisions following NPM recommendations

Cecilia Sánchez Romero
Minister of Justice and Peace, Costa Rica

Costa Rica has strongly promoted the adoption of the Optional Protocol to the UN Convention against Torture. It submitted the first draft of the Protocol to the United Nations in March 1980 and chaired the Working Group set up to draft the protocol during the ten-year negotiation process. Costa Rica was one of the first countries to ratify this treaty and establish its national mechanism to prevent torture.

'A long struggle by the NPM to highlight violations of human rights formed the basis for a government decision'

In enforcing custodial sentences, we discovered that what conservative and authoritarian sections of society most want is for more prisons and more cells to be built in order to house more people. A demand for respect and recognition of detainees' human rights has little impact on this segment of the population. Acknowledging that the majority of those who are imprisoned are poor and vulnerable people who have never had access to opportunities, the Ministry of Justice and Peace believes it is imperative to improve conditions, for the prison population, for prison officials, and for police officers. It is imperative to improve the activities, the facilities and intervention programmes.

The National Preventive Mechanism (NPM) is an oversight body that works extensively to raise awareness. It also ensures that the elimination of bad practices towards the prison population is placed firmly on the government agenda. The NPM is an ally which can use its position to draw attention to an issue and demand action that other parties have not taken – for fear of political scorn – on a topic that is extremely unpopular among a section of the population.

The Ministry has a frank and open relationship with NPM representatives and has held regular meetings and dialogue on its reports, which are seen as binding documents of the utmost importance in establishing priorities for the prison system.

The recommendations in the NPM's thematic and visits reports are needed to make informed decisions. They are also a guide for changing policies, institutional practices and operational procedures. The goal is for prisons to cease being centres where violence and blatant violations of human rights occur. The NPM's presence in the decision-making processes of the Ministry of Justice and Peace and other competent authorities is important in driving forward public policies on administering justice.

For years, the NPM has been vocal on the poor conditions and repressive system in sector F (maximum security) of the La Reforma prison. In August 2016, the current administration took the decision to close what was known as the 'old maximum security' sector. At the time, I said: 'A place like this is completely inappropriate, unhealthy and unacceptable. People have been detained here for years and I cannot allow this. It's my obligation to close it for a number of reasons, the main one being that it is a violation of human dignity.' A long struggle by the NPM to highlight vulnerabilities and violations of human rights therefore formed the basis for a government decision.

The criteria the NPM presents form the basis for reforms to the prison system, and its recommendations are taken into account in drafting programmes that are more modern and better-managed. A recent example is the NPM 2015 annual report,

COSTA RICA

- OPCAT ratification: 1 December 2005
- NPM designation: 13 December 2006

National Preventive Mechanism:

- Decentralised unit within the Ombuds Institution, with broad autonomy
- Working since early 2009
- Visited prisons, police stations, court cells, juvenile detention centres, psychiatric institution and immigration centres
- Regular dialogue with authorities through inter-institutional commissions, among others

which stated that the La Reforma prison 'could be defined as a mega-jail.' The mega-jail is an idea that was removed from current prison construction projects. In particular, this government has promoted a design for prisons that house no more than 500 people, as we believe that having vast numbers of prisoners is unsustainable and ungovernable.

The National Preventive Mechanism's multiple recommendations, arising from visits reports and analytical work, are considered priorities when working with a small budget. The Ministry of Justice and Peace is an institution which, despite its many shortcomings and needs, cannot justify the lack of action on human rights violations owing to a lack of funds. The NPM therefore provides another source of ideas that help to strengthen the management of the system despite limited resources.

Joining our efforts has paved the way and yielded results. It is the responsibility of the Ministry of Justice and Peace to continue acknowledging what has been achieved so far.

Photo: Parliament Commissioner for Human Rights, Ukraine

NON-TRADITIONAL PLACES. Non-traditional places of detention, which often have not been subject to independent oversight, can pose additional risks of ill-treatment. In Ukraine, as in many other countries, the NPM has increasingly monitored these places, including health care institutions which provide palliative care.

Beyond the traditional: protecting the rights of palliative patients

National Preventive Mechanism, Ukraine

The Ukrainian National Preventive Mechanism is an 'Ombudsman Plus' model, composed of staff from the NPM Department under the Office of the Ukrainian Parliament Commissioner for Human Rights and civil society representatives. There are more than 200 civil monitors regularly visiting places of detention as part of the NPM. The involvement of civil society in the NPM work has been crucial to be able to monitor the large number of places of detention in the country and to conduct research on specific thematic areas.

'Hospices and palliative departments within hospitals are considered by the NPM as places of deprivation of liberty as the majority of patients do not give their consent for hospitalisation and treatment'

Since the beginning of its activities in 2012, the Ukrainian National Preventive Mechanism has monitored the conditions and treatment of persons deprived of liberty in different types of places of detention, including prisons, police stations, immigration facilities, juvenile detention centres, court facilities, children's care homes, psychiatric institutions and military units.

In 2015, the NPM also started to monitor hospices and palliative departments within hospitals, which are considered to be places of deprivation of liberty as the majority of patients do not give their consent for hospitalisation and treatment. Through its first visits to such institutions, the NPM found that palliative patients were being kept in terrible material conditions, without any unified standards of treatment. There was no specific state budget for hospices and no legal regulations for providing narcotic drugs for patients suffering from permanent

UKRAINE

- OPCAT ratification: 19 September 2006
- NPM designation: 2 October 2012

National Preventive Mechanism:

- Ombudsman Plus model
- Parliament Commissioner for Human Rights (Ombuds Institution), together with human rights NGOs and civil monitors
- NPM department created within the Ombuds Institution
- Working since 2012

pain. As a result of the NPM's intervention, a national round table was conducted with all relevant stakeholders. The recommendations of the round table were sent to the Prime Minister, who issued a special decree requesting all regions to ensure places for palliative patients at hospitals. A state budget was also allocated for hospices. Since then, the situation has significantly improved. Today, there are two centres for palliative and hospice care, eight hospices and 60 hospital divisions for palliative care, for a total of 1'500 patients, functioning in the country.

The NPM continued to monitor these institutions and found that, despite the improvements made, the existing number of institutions for palliative and hospice care is not enough. 3'500 patients are still in need of palliative care they do not receive in specialised institutions. Furthermore, palliative care is not provided in accordance with international standards. Contrary to all regulations, patients are not kept in hospices only during the terminal stage of their illness. Instead, they are used as social institutions for long-term stays. The NPM has also observed the insufficient provision of drugs for pain relief and an absence of licenses for medication for depression and anxiety.

In 2015–2016, the Office of the Commissioner, jointly with civil society representatives, organised several events to discuss issues related to the provision of palliative care and to find relevant solutions. As a result of the NPM's recommendations, following visits to these institutions, the Ministry of Health adopted an order which allows the use of advanced tools and standards to ensure anaesthesia for palliative patients. Also, programmes of palliative care have been developed and approved

in all regions. Within the framework of these programmes, divisions of palliative care were opened in 2016 at the clinical hospitals of the cities of Vinnytsia and Kropyvnytskyi.

As part of its preventive work, the NPM actively participates in drafting new, or amending existing, legislation related to different aspects of the functioning of places of detention and treatment of persons deprived of liberty. This work relies on the effective cooperation of the Office of the Commissioner with different parliamentary committees. In 2014, several amendments to the Criminal Executive Code were adopted, which significantly improved the treatment of detainees in penitentiary institutions. Among the improvements, life prisoners were given the right to live with their family members for three days every three months in a specially equipped room. Various restrictions were also removed for prisoners sentenced to arrest (a type of punishment for up to six months). In 2016, upon an initiative of the NPM, the parliament amended a number of legislative acts, which led to improvements in the procedure of administration of incentives and penalties to prisoners, more humane procedures and conditions of corrections, and better access to justice for detainees.

Monitoring in a conflict zone

The start of hostilities in Eastern Ukraine posed new challenges for the NPM. For the last two and a half years, the Office of the Commissioner, in close cooperation with civil society, has managed to monitor the situation in the conflict zone (this is a zone where anti-terrorist operations are being conducted, it is controlled by the Government of Ukraine but is very close to the Donetsk and Luhansk People's Republics) and to highlight the risks faced by persons in situations of vulnerability, particularly children, persons with disabilities and elderly people. Based on the findings of more than 50 NPM visits, the Office of the Commissioner has repeatedly drawn the attention of national and regional authorities to the need for urgent evacuation of staff and persons deprived of liberty, particularly the most vulnerable, to safe regions of the country. As a result, three decrees were issued by the Prime Minister, more than 1'500 places were prepared by the Ministry of Social Policy all across Ukraine, and an evacuation was launched. In 2015–2016, 133 persons held in penitentiary facilities in the zone not controlled by the Government of Ukraine were transferred to other regions. NPM visits to places of detention located in the conflict zone also served as a basis for the Commissioner to draft a Special Report on the situation in that zone.

Photo: MDRI, Serbia

CIVIL SOCIETY. Civil society organisations working as part of the NPM in Serbia play a crucial role in strengthening the capacity of the NPM to identify the risks faced by persons with disabilities and to question their institutionalisation.

‘Ombudsman Plus’: The value of civil society experiences

Dragana Ćirić Milovanović
Executive Director of Mental Disability Rights Initiative, Serbia

For many years now, the Ombudsman of the Autonomous Province of Vojvodina and several civil society organisations in Serbia have been very active in protecting the rights of people deprived of their liberty and in preventing torture, gaining experience in monitoring of institutions. For this reason, Serbia chose the so-called ‘Ombudsman Plus’ model for its National Preventive Mechanism, where the ombuds institution (the Protector of Citizens) performs the NPM mandate together with provincial ombuds institutions and civil society organisations, including Mental Disability Rights Initiative – Serbia, an affiliate of Disability Rights International (DRI).

‘There is someone outside the walls of institutions, watching and protecting the rights of persons behind those closed doors’

Covered by the veil of necessity and good intentions, unlawful detention of persons with disabilities has long gone unquestioned, staying under the radar of various human rights monitoring bodies. It was only after the pioneer work of several civil society organisations such as Disability Rights International, revealing the atrocious abuses these people have been exposed to, and after the adoption of the UN Convention on the rights of persons with disabilities, that this issue was put on the agenda of those who are monitoring places of detention.

Still, the practice has been changing slowly, as monitoring bodies have mainly applied the same methodology used for prisons and other similar facilities. Their primary focus was often to improve inhuman and degrading conditions and to

identify intentional ill-treatment. However, for persons with disabilities kept in mental health hospitals and social care homes, it must go much further than this. For them, it is about questioning detention itself while making sure that harmful treatments are banned immediately.

Being locked up in a mental health hospital or social care home is still a reality for millions of people worldwide, mainly those with perceived or actual intellectual or psycho-social disabilities. People are subjected to inhuman and degrading treatment and abuse, forced to spend their entire lives in institutions. Children and adults living in isolation, lingering in inactivity, tied down and restrained over a lifetime, are forced to endure dangerous and painful treatment that can amount to torture.

Serbia is no exception in this regard. It was just after DRI's report in 2007, revealing abuses in Serbian institutions for persons with disabilities, that the 'new' human rights approach towards persons with intellectual and psycho-social disabilities gained much needed support from human rights institutions and organisations. Serbia was fortunate to have strong civil society organisations, monitoring human rights in closed institutions, which helped in developing the NPM as an 'Ombudsman Plus' model.

Despite some challenges, such a model holds many advantages. First of all, initial capacity building of this new mechanism would not have been possible without civil society organisations with years of experience in human rights monitoring. This was particularly important for people belonging to various vulnerable groups,

SERBIA

- OPCAT ratification: 26 September 2006
- NPM designation: 28 July 2011

National Preventive Mechanism:

- Ombudsman Plus model
- Protector of Citizens (Ombuds Institution), together with the Ombuds Institution of the Autonomous Province of Vojvodina and 9 civil society organisations
- NPM department created within the Ombuds Institution
- Working since 2012

including persons with disabilities. A series of training events were organised on specific topics, including disability rights and torture as well as the 'paradigm shift' that the Convention on the Rights of Persons with Disabilities has brought.

Joint visits were another step where experienced monitors in the disability field trained new staff on the spot, illustrating the specific forms of ill-treatment that people with disabilities were exposed to. The joint reports and recommendations reflected the knowledge of the most recent human rights standards in the disability field, such as an immediate ban of any kind of isolation of persons with mental disabilities, the unlawfulness of their detention on the basis of disability, as well as a specific statement that closed institutions for persons with disabilities are the very core of the problem, as they increase the vulnerability of people who are kept there against their will.

Another advantage is that civil society organisations have direct contact with people detained in institutions and therefore become the focal point for information, complaints and feedback on the effects of certain visits. This gives the Serbian NPM the possibility to act in a timely and proactive manner. The proactive, preventive role has shown immediate effects in many visits, simply by showing that there is someone outside the walls of institutions watching and protecting the rights of persons behind those closed doors.

When it comes to challenges, the key concern was that the 'Ombudsman Plus' model could be used as an argument by the government to deny access to closed institutions for civil society organisations outside of the NPM. However, the UN Convention on the Rights of Persons with Disabilities, in its Article 33, emphasizes the importance of the involvement of civil society and, in particular, of persons with disabilities themselves in the monitoring of implementation of rights guaranteed under the Convention. This explicit guarantee should ensure that the voice of civil society and of people with disabilities, who are often exposed to unlawful detention, is heard, regardless of the existing model of the National Preventive Mechanism.

Photo: CGLPL

PSYCHIATRIC INSTITUTIONS. Persons deprived of their liberty in psychiatric institutions are at high risk of abuse, and their situation often remains overlooked. The French NPM has raised awareness about the reality in such institutions, contributing to positive changes in law and practices.

Changes in law and practices to protect persons with mental disabilities

National Preventive Mechanism, France

During the first eight years of its existence, the General Controller of Places of Deprivation of Liberty, the French NPM, has positioned itself as a reference institution with influence on issues related to deprivation of liberty in the country. Through its regular and thorough visits to places of detention, its recommendations, thematic opinions and reports, the NPM has managed to positively influence the public debate and policies on detention issues in France.

'The French NPM has also been able to influence legislation to modernise the national health system'

In French prisons, detainees with mental disabilities cannot be treated without their consent. They need to be formally hospitalised within a psychiatric institution. However, the National Preventive Mechanism, the General Controller of Places of Deprivation of Liberty, noticed that persons with a psychic crisis could be placed in a cell belonging to a prison's health service for several days, and given injections without their consent. They were also denied access to visits, the telephone and all available activities in detention during their stay in this cell. The NPM raised the issue with the relevant ministry in order to bring this practice to an end. As a result, the cell was transformed into a de-escalation room. The conditions of use are clearly defined in a protocol in order to respect patients' rights: detainees may only stay in the room during daytime and for a maximum of 12 hours.

The French NPM also carries out visits to psychiatric institutions. At the beginning of a visit to a psychiatric institution, the controllers raised questions regarding the existence of a totally transparent window in the isolation room, overlooking a

courtyard and on the recording of the use of isolation. The next day, the director of the institution temporarily put an obscuring film on the glass, ordered a two-way mirror for a more permanent solution and opened an isolation register. In another psychiatric institution, the screen installed to monitor the isolation room from the medical office was visible from the outside. Located in a place where people were passing through, patients and staff could easily view the images. Following the NPM's recommendations, the screen position was changed to protect patient dignity and privacy.

Thanks to its regular monitoring of mental health institutions, the French NPM has also been able to influence legislation to modernise the national health system. The law of 26 January 2016 states that isolation and restraints must only be used as a last resort and must be duly registered.

Dignity for women during gynaecological examinations and child birth

In France, in private interviews, female prisoners have regularly testified to the NPM about unacceptable conditions during gynaecological examinations, conducted in the presence of female prison staff and sometimes with the use of restraints. A woman even told the NPM that she gave birth with a female prison staff member in the room.

On several occasions, the NPM has reminded prison authorities that the law prohibits the use of restraints and the presence of prison staff during gynaecological examinations and child birth. It has brought the issue to public

FRANCE

- OPCAT ratification: 11 November 2008
- NPM establishment: 30 October 2007

National Preventive Mechanism:

- General Controller of Places of Deprivation of Liberty
- New specialised institution
- Working since 2008

attention in its annual reports and in a public 'opinion' regarding the treatment of detainees in health establishments. In December 2015, the management of the prison administration took action on the basis of the NPM's findings. In a note to all prisons, the authority referred to the NPM's recommendations and recalled that the law must be strictly applied so that women's dignity and integrity are respected during gynaecological examinations and child birth.

TRANSPARENCY. External and independent monitoring opens up the closed world of detention and increases transparency. It contributes to change cultures, attitudes and behaviours in places of detention.

Independent monitoring changes attitudes of prison staff

Pak Priyadi
Head of the Regional Office of the Ministry of Law and Human Rights in Maluku, Ambon, Indonesia

Advocacy for OPCAT ratification has been on-going in Indonesia for the last twelve years. Despite the slow progress, national actors came together in 2013 to discuss the most suitable NPM model for Indonesia. This unique step was taken to build momentum and prepare Indonesia to become a State party to the OPCAT. The national actors' openness and readiness to set up the NPM is deeply rooted in a growing human rights awareness, not only at the civil society level, but also among independent national institutions and law enforcement agencies. Authorities in Indonesia, including the correctional service, recognise the importance of oversight in places of detention.

'Authorities gradually opened up to the idea and welcomed monitoring bodies'

My civil servant career started as a registration staff member at the Subdivision Head of Registration Office in North Sulawesi. I then worked with various correctional facilities, including juvenile detention centres. I chose to work in this field as part of my self-actualisation journey and I was particularly interested in upholding human rights. My actual work in relation to internal and external monitoring of places of detention started in 2002, when I headed the Development and Education Division, Development and Registration and the Correction Division in Bali and South Kalimantan. My various positions and roles within the Correctional Service had allowed me to experience some of the key challenges and benefits of detention monitoring. For example, I could understand how authorities in the beginning resisted the idea of being monitored by external bodies. However,

INDONESIA

- OPCAT ratification discussed for several years
- May 2016: five national institutions signed an agreement with the Ministry of Law and Human Rights for closer cooperation and monitoring of places of detention, in preparation of a future ratification of the OPCAT
- The five national institutions are: the National Human Rights Commission (Komnas HAM), the Child Commission (Komnas Anak), the Women's Commission (Komnas Perempuan), the Ombudsman and the Victim and Witness Protection Agency

after explaining the importance of oversight in detention places, they gradually opened up to the idea and welcomed monitoring bodies. In addition to that, the vastness of Indonesian territory and the diversity of tribes, religions and customs pose geographical and cultural challenges. Therefore, oversight bodies must have the knowledge, wisdom and tolerance to adapt to and communicate with local authorities and communities.

In general, the correction system in Indonesia is rather conducive for detention monitoring. We have policies and regulations that respond to the needs of the public and comply with international standards, particularly the Nelson Mandela Rules. Independent monitoring has a tremendous impact on the mentality, behaviour and conduct of law enforcement officials in correctional institutions. We noticed how abusive or deviant conduct by authorities gradually decreased. In some instances, such changes led to authorities having a more open attitude towards developing proper standard operating procedures for treatment of law offenders.

The positive impact of monitoring the situation of persons deprived of their liberty does not end here. The reform of standards and regulations in the correction service has a direct impact on how persons deprived of their liberty are treated. Using respect and fulfilment of rights of persons deprived of their liberty as main indicators in measuring performance of correctional institutions resulted in a more humane approach in the detention system. In the process, complaint mechanisms and information dissemination to family and the public are also monitored. These efforts enhance the transparency of Indonesia's public service, especially where deprivation of liberty is concerned.

In Indonesia, our places of detention today receive regular visits from monitoring institutions, including the Ombudsman and the National Human Rights Commission (Komnas HAM), civil society organisations and international institutions such as the ICRC. The outcomes from independent monitoring have assisted the Indonesian government in ensuring better standards and treatment of persons deprived of their liberty. These efforts have also helped in preventing torture and ill-treatment. As Indonesia is a State party to the UN Convention against Torture, ratifying the OPCAT is a necessity, which will further reinforce and accelerate the prevention of torture and ill-treatment and strengthen the capacity of torture prevention actors in the country.

Detention monitoring used to be a difficult and an intimidating exercise for authorities. This reminds me of an Indonesian saying: **'If it can be difficult, why make it easy?'** However, today, as authorities in Indonesia are becoming more open and accepting the idea of oversight in places of detention, I'd rather say: '**if it can be easy, why make it difficult?'**

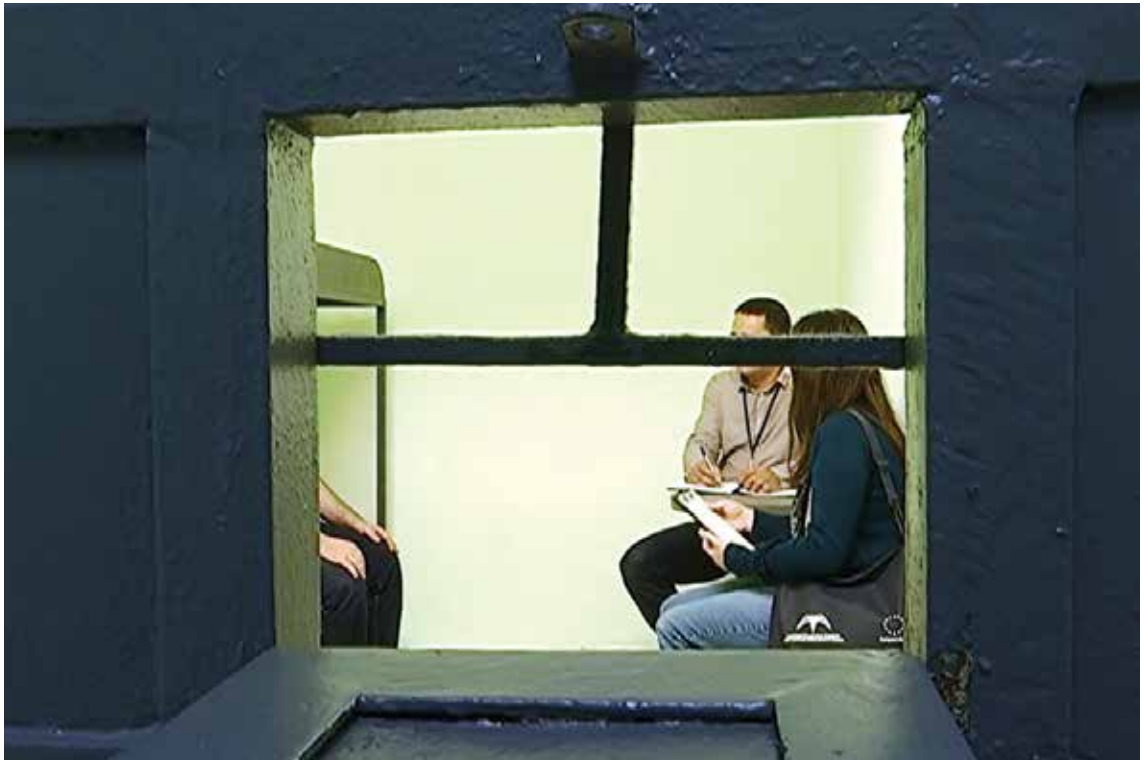

Photo: Public Defender, Georgia

REGULAR VISITS. The NPM's regular monitoring of a wide range of state-run and private institutions has contributed, over time, to changes in detention practices and to reforms at the policy level. It resulted in improved conditions of detention and better treatment of persons deprived of liberty.

Contributing to eliminate prison overcrowding

National Preventive Mechanism, Georgia

Since 2009, the Public Defender of Georgia has fulfilled the role of NPM. A specific unit was created within the Public Defender's Office, assisted by the 'Special Preventive Group' with independent experts drawn from civil society. The NPM also cooperates with NGOs on specific thematic projects and is supported by an advisory council, composed of chairpersons of different units of the Public Defender's Office and representatives of academia, international governmental and non-governmental organisations and local NGOs.

'Several prisons were closed due to their poor conditions, many others were refurbished and prisoners' access to healthcare significantly improved'

Overcrowding was a severe problem in the Georgian penitentiary system. In its recommendations to the authorities, the NPM of Georgia has constantly raised this issue and its detrimental consequences on the treatment of prisoners, access to medical care and cell conditions.

From 2012, the authorities have started to take measures to reduce prison overcrowding, using legal mechanisms such as amnesty, parole, pardon and release due to health conditions. As a result, the prison population has dropped from around 24'000 in January 2012 to approximately 9'700 in January 2016. This enabled the authorities to implement long-standing recommendations from the NPM and to improve material conditions. Several prisons were closed due to their poor conditions, many others were refurbished and prisoners' access to healthcare significantly improved.

GEORGIA

- OPCAT ratification: 9 August 2005
- NPM designation: 16 July 2009

National Preventive Mechanism:

- Public Defender (Ombuds Institution)
- Working since 2010
- NPM unit created within the Public Defender's Office
- Special Preventive Group: civil society, independent experts
- Advisory council: units of the Public Defender's Office; academia, international governmental and non-governmental organisations; local NGOs

The NPM has constantly provided concrete recommendations on the functioning and management of places of detention. It has also paid special attention to the prison management, recommending dynamic security, which envisages a positive relationship between staff and detainees, and a more rehabilitative approach. As a consequence, the Ministry of Corrections has started to implement several policies to increase staff accountability, develop precise job descriptions for staff and improve staff training and supervision.

Beyond penitentiary institutions

The Georgian NPM has visited different types of places of detention, including prisons, police stations, temporary detention isolators (police custodial facilities), migration centres, children's care homes, mental health institutions and care homes for persons with disabilities. Over time, the NPM has expanded its preventive work to also cover other types of places of detention. In 2014, it started to monitor return flights of migrants. In 2015, for the first time, the NPM was enabled to visit and monitor child care institutions operated by religious institutions. The same year, the Georgian NPM was also granted unimpeded access to military units. During its monitoring visits, it has paid special attention to the situation of persons who are particularly vulnerable in detention.

The NPM has conducted thematic monitoring of the situation of persons with disabilities in detention. The findings and recommendations arising from its visits attracted increased attention. As a result, the Ministry of Corrections has taken several steps to adapt new penitentiary facilities to the needs of persons with

disabilities. A special long-term care unit was also opened at the Central Prison Hospital. Furthermore, the issue of addressing the special needs of persons with disabilities was included in the training curricula of prison staff.

Thanks to its regular monitoring of child care institutions, the NPM has been able to contribute to the reform of the child care system. Old and large child care institutions have been dismantled and replaced by small homes for children, providing better conditions and care. The process of further deinstitutionalisation of children is also ongoing.

Photo: Amnesty Senegal

PARTNERSHIPS. The prevention of torture is a joint responsibility. In many countries, civil society organisations have been the driving forces in advocacy campaigns for OPCAT ratification and have remained both important partners for National Preventive Mechanisms and watchdogs that monitor the monitors.

Stronger NPM with continuous support from human rights activists

Seydi Gassama
Executive Director, Amnesty International Senegal

The National Observatory of Places of Deprivation of Liberty, the NPM in Senegal, was set up thanks to the combined efforts of international and national actors, such as Amnesty International (AI) Senegal. It began to operate in December 2012 and has since then created a framework for dialogue and consensus-building with the authorities, civil society and the general public. The National Observatory has also set up an Advisory Committee to coordinate and share experiences with some major NGOs, including AI Senegal.

'The media, victims and parents of victims of torture in Senegal now turn to the Observatory with their questions and requests'

Senegal was the first country to sign the OPCAT after its adoption on 18 December 2002. In spite of all expectations, it then took more than four years to ratify the treaty. The ratification came as a result of an awareness-raising campaign and lobbying that involved national human rights actors including Amnesty International Senegal, parliamentarians and the media, and international actors, such as the APT, the United Nations High Commissioner for Human Rights and some foreign embassies in Senegal.

The adoption of the law which created the NPM was an equally challenging process. The law met resistance at the highest level of government and from the defence and security forces. A person involved in the adoption of this law one day told me that a senior member of the security forces had made a comment to the Minister of Justice, a few moments before the start of the debate in Parliament:

SENEGAL

- OPCAT ratification: 18 October 2006
- NPM establishment: 2 March 2009

National Preventive Mechanism:

- National Observer of Places of Deprivation of Liberty
- New specialised institution
- Working since 2012
- Advisory Committee (**Comité de Veille**) composed of representatives of NGOs and professional associations

'Minister, with this law, if the person who runs this institution does not cooperate, we won't be able to work…' In other words: we will not be able to use our good old interrogation methods of torture and abuse.

The law was, however, unanimously adopted by the delegates present at the National Assembly. President Abdoulaye Wade appointed the National Observer of Places of Deprivation of Liberty on the eve of the presidential election, in February 2012.

A few months later, the institution was given premises and a small budget to start operating. The shoestring budget was renewed for several years, until 2016, when it was increased substantially.

During the lean years, APT and Amnesty International supported the institution to allow it to work and to raise its profile. Today, in addition to financial support from the government, the National Observatory of Places of Deprivation of Liberty has several partners, including the UN and the European Union. To include other actors in its work, the Observatory has set up an Advisory Committee, with non-governmental organisations and government institutions working on preventing torture. Amnesty International Senegal is an active member of this Committee, which meets when convened by the Observer to discuss the challenges related to the fight against torture in Senegal.

The media, victims and parents of victims of torture in Senegal now turn to the Observatory with their questions and requests. The NPM has carried out several field missions, with both planned and unannounced visits. It regularly submits

recommendations to the competent authorities to prevent torture and improve living conditions for detainees.

It has referred several cases to the judicial authorities on violations of the human rights of detainees, including cases of detention of individuals with mental disabilities, and it has defused strikes by detainees in prisons in Dakar and in the regions. For example, the Observatory played a critical role in resolving the mutiny in Rebeuss Prison in Dakar in September 2016, where prisoners protesting against long pre-trial detention periods attempted a mass breakout, unfortunately resulting in one dead and more than 40 injured among detainees and prison wardens.

The institution will undoubtedly publish a report before the end of the current Observer's mandate in February 2017. According to the law that established the National Observer of Places of Deprivation of Liberty, a report should be published every year.

Photo: Uruguay NPM

CHILDREN. Children are one of the most vulnerable groups in detention. The NPM of Uruguay has dedicated large part of its work to monitoring their situation in all detention settings, contributing to positive changes as a result of its visits and recommendations, constructive dialogue with authorities and cooperation with civil society.

Enhanced protection of children deprived of liberty

National Preventive Mechanism, Uruguay

The NPM of Uruguay, set-up within the National Human Rights Institution and the Ombudsman, started its work in late 2013. Until then, there was no body with a mandate to monitor all places of detention in the country. Regular monitoring, with unannounced visits, has allowed the NPM to cover a variety of places where persons are deprived of liberty.

'The relationship with civil society is key for the NPM's legitimacy and for enhancing the impact of its preventive work'

Since the beginning of its work, the NPM of Uruguay has planned the monitoring of various types of places of detention, taking into account the different levels of vulnerability detected in each of them. In late 2013, it began monitoring detention centres for adolescents in conflict with the law and decided to focus on three groups because of their greater vulnerability: adolescents under 15 years, adolescent girls, and juveniles deprived of liberty in maximum security centres.

In May 2014, the NPM started monitoring psychiatric clinics for adolescents in places where major complaints and grievances were detected. Later that year, the NPM began monitoring the situation of children and adolescents who are deprived of liberty for their protection. In a second stage, the NPM also included the monitoring of foster care (people who take care of children based on agreements signed with the responsible state authority that should supervise them). In 2015, regular monitoring visits included adult prisons from a preventive and proactive perspective. In the second half of 2016, the NPM incorporated visits to police stations. This progressive approach allowed the NPM to develop different monitoring tools.

URUGUAY

- OPCAT ratification: 8 December 2005
- NPM designation: 24 December 2008

National Preventive Mechanism:

- National Human Rights Institution and Ombudsman
- NPM unit
- Working since 2013

The NPM has made specific proposals for the protection of human rights of persons deprived of liberty in the places where it conducts monitoring visits. This was the result of regular monitoring and follow-up visits by the NPM, the publication of reports with recommendations and photographic records, as well as regular meetings with relevant authorities and cooperation with civil society and government agencies in the framework of interinstitutional working groups.

The NPM also contributed to ensuring accountability for acts of torture and/or ill-treatment, collaborating with the investigations carried out by the judiciary regarding various complaints of violations of human rights in detention centres for adolescents in conflict with the law. Based on such complaints, a group of officials was prosecuted for the crime of torture, which sets an important precedent. In another case, several police officers, responsible for punishing a group of adolescents during the transfer from one establishment to another, were prosecuted for the crimes of assault and abuse of authority against detainees. In both cases, the judges required the NPM's testimony and used its reports and photographic documentation as relevant evidence.

Joining forces with civil society

From the beginning, the NPM has maintained close links with civil society organisations. The relationship with civil society is key for the NPM's legitimacy and for enhancing the impact of its preventive work. In this regard, the NPM, together with the National Human Rights Institution and Ombudsman, issued a public statement rejecting the government's initiative to hold a constitutional referendum

to lower the age of criminal responsibility. The statement was widely disseminated and, as a result, the NPM was invited to a series of public and academic fora to explain its position. The NPM also supported the youth groups that formed the 'NO' Commission (NO A LA BAJA), whose work had a multiplier effect and balanced the mainstream discourse offered by the media. Three months before the referendum, the polls showed over 60 percent support for the proposed constitutional reform. In October 2014, although by narrow majority, the proposed constitutional reform was finally rejected by the people.

Photo: Valerio Vincenzo

TRANS PERSONS IN DETENTION. Trans persons are at great risk of discrimination and abuse in detention and find it especially difficult to access appropriate medical care. NPMs can play an important role in strengthening their protection.

‘The monitoring team took the time to hear my story’

Chloë Rassemont Vilain, France

Chloë, a woman trapped in a man’s body, was sentenced to 18 years in prison. During her detention, she fought to be allowed to change her sex. While imprisoned in Caen, she was visited by a team from the General Controller of Places of Deprivation of Liberty, the French NPM. The encounter led to the Controller taking a closer look at the situation of trans detainees and the publication, in June 2010, of an ‘opinion on the care and management of transsexual prisoners.’ In this opinion, the Controller recommended, among other measures, supporting trans detainees with a reference medical team, monitoring their physical security without resorting to isolation, and respecting their right to privacy.

‘I’ve experienced a triple incarceration: being imprisoned in a man’s body, placed in the wrong prison for my gender and kept alone in a cell’

I spent 16 years of my life in prison, however in reality I’ve been imprisoned for 54 years. I was born a woman in a man’s body. My name is Chloë, but in prison the authorities refused to see me as a woman. I’ve experienced a triple incarceration: being imprisoned in a man’s body, placed in the wrong prison for my gender and kept alone in a cell to protect me from any attacks. I’ve had to face the insensitivity of the authorities who refused to transfer me to a women’s prison. I had to deal with attacks from fellow inmates. I was humiliated, threatened and raped. I withdrew into myself, hardly ever left my cell and was left to die.

This lasted for seven or eight years, until I met someone who is now my partner and has shone a ray of light into this darkness. This kept me going even though my situation didn't improve. Through sheer persistence, I was finally granted the right to hormone therapy. In fact, I'm the first person to have been given it in prison. Despite numerous courses of action, my application for [gender reassignment] surgery was finally rejected, even though I had an expert assessment that supported it. I began my own cry for help: I started to self-harm, I burnt myself, I cut a finger and after a series of injuries, I ended up, while alone in my cell, cutting 'this thing' off.

The only help I had was from associations and the media, as well as the General Controller of Places of Deprivation of Liberty (CGLPL). A CGLPL team did in fact come and see me in prison. They took the time to hear my story. They're human, people who really do listen to you; they have good analytical skills and know how to weigh up the pros and cons. They saw how much I was suffering and acted as mediators. The General Controller is there to explain to the government that we shouldn't be tortured. We shouldn't be erased just because we're in prison. Yes, we've committed a crime but we still exist. We have a heart, we work and we shouldn't be treated as second-class citizens. The CGLPL team is there to tell the prison administration that one day we'll be released, that we deserve a second chance, and that during our detention we have the right to be treated with dignity. Even after their visit, the CGLPL team stayed in regular contact and rang for news; they were excellent – not only because I was Chloë and trans, but because I was Chloë and I was suffering.

FRANCE

- OPCAT ratification: 11 November 2008
- NPM: General Controller of Places of Deprivation of Liberty

National Preventive Mechanism:

- Issues opinions on thematic issues, beyond a single place of detention
- NPM's opinions are published in the Official Journal of the Republic
- Opinion of 30 June 2010 on the care and management of transsexual prisoners: several problems revealed, including lack of guiding principles related to prison regime (women's clothes, isolation, beauty products), lack of access to relevant medical care provided outside of institutions, and bullying suffered by trans persons

The publication of the CGLPL's opinion on the treatment of trans detainees, although only recommendations, is still very useful. Now that I'm out of prison, I apply it and share it with others. I would like to see it become law. The situation for trans people needs to change urgently. It's a lawless world behind walls. The guards do what they want and we are effectively silenced. This is why an institution such as the CGLPL is invaluable. The authorities listen to them.

Photo: Paraguay NPM

VULNERABILITIES. Through their broad preventive work, NPMs play a key role in shedding light on the risks faced by persons in situations of vulnerability in detention. Paraguay's NPM, through its visits to different places of detention, dialogue with authorities, research and links with civil society and the media, has positioned these issues on the public agenda.

Making the invisible visible: a focus on the most vulnerable

National Preventive Mechanism, Paraguay

In a short space of time, Paraguay's NPM has become the reference institution for persons deprived of liberty, both in channelling complaints and petitions, but also in serving as a source of information and vehicle for coordinating actions with civil society organisations to prevent torture in the country. The NPM has helped to highlight the problem of deprivation of liberty in all its forms, promoting actions to prevent torture and other ill-treatment and to change the culture of detention as the prevailing response in Paraguayan society.

'Seven care homes for children have been shut down, helping to deinstitutionalise the children and integrate them in a family environment'

In its work, the Paraguay NPM has managed to shed more light on the situation of persons deprived of liberty and to draw the media's attention to it – not only by publishing reports but also through interventions and dialogue with the authorities.

The NPM has also carried out targeted scientific research, which has revealed statistics and situations that were previously unknown. This has given special visibility to groups in situations of particular vulnerability in detention: children and adolescents, women, elderly people, persons with disabilities, LGBTI persons, and indigenous people.

Researchers used innovative approaches to explore the causes of violations of human rights and have produced new knowledge and information on groups about whom there was very little data and which nobody or only a few people were investigating.

PARAGUAY

- OPCAT ratification: 2 December 2005
- NPM establishment: 27 April 2011

National Preventive Mechanism:

- New specialised institution
- Working since 2013
- Composed of 6 members, staff and qualified citizens elected to support the NPM's work

The results show a significant discrepancy between the law and the actual practice. Based on these findings, public and private institutions have been able to take more targeted steps towards improving the living conditions of these groups of people.

The NPM was able to raise awareness on the extreme situation of risk in a correctional facility where adolescents were being held in an annex of the adults' prison. Immediate action was required to prevent torture, abuse and impunity, and the NPM organised round-table discussions with judicial authorities, prosecutors and local governments to discuss its reports and recommendations. It also contributed to the opening of a new centre for adolescents in conflict with the law, which operates based on a socio-educational model.

The NPM's links with civil society, through agreements, volunteering and escabinado – enabling the effective participation of qualified citizens supporting the NPM's work – allows society to be actively involved in its work to prevent torture. More than 200 university students have been able to contribute to the NPM's work in its first few years of operation.

Deinstitutionalisation of children

Since it started working in 2013, the NPM has conducted systematic monitoring of children's homes in the country, documenting inadequate living conditions and serious violations of human rights. The NPM has also questioned the

institutionalisation of children and adolescents as a definitive and permanent response and has advocated for public policies and actions aimed at deinstitutionalisation.

Through dialogue and coordination between the NPM and the authorities, local communities and civil society organisations, seven care homes for children have been shut down, helping to deinstitutionalise the children and integrate them into a family environment. In three municipalities, the local authorities have agreed to turn municipal children's homes into open centres, resolving the problem of separating children from their families. In July 2013, following the NPM's recommendation, the Supreme Court issued a resolution to ensure that children and adolescents are only placed in institutions in exceptional circumstances and as a temporary arrangement, with a focus on finding and maintaining ties with their families.

Photo: Steve Daniels/Flickr

IMMIGRATION DETENTION. NPMs play an essential role in addressing the vulnerabilities of persons deprived of liberty in immigration detention settings. The experience of former immigration detainees can greatly contribute to their preventive work.

Asylum seeker's experience brings new perspective to the NPM

Kizza Musinguzi
Head of department and Head of physics at a secondary school in London, UK

Kizza Musinguzi claimed asylum on his arrival in the United Kingdom in 2005. He was detained for several months in different immigration detention centres and short-term holding facilities within the UK. During his time as a refugee he worked with various charities for asylum seekers and he now works within the education system. He has regularly collaborated with Her Majesty's Inspectorate of Prisons for England and Wales (HMIP), before and during inspections. HMIP is one of the 20 bodies making up the UK NPM, and it also coordinates the NPM.

'One of the worst things I experienced in the immigration system was the constant movement between centres'

I arrived in the United Kingdom in 2005 as an asylum seeker. One of the worst things I experienced in the immigration system was the constant movement between centres. Imagine having to move houses every three months, sometimes more often, and having to almost instantaneously integrate within a new community! This can be very distressing and it increases the feeling of isolation and desperation. I recall spending the best part of seven months in six different immigration removal centres or short-term holding facilities, often travelling in a secure van. This was very disorienting for me, and it was exhausting. Another problem I have observed is the routine duplication of processes through the immigration estate. On occasions, you would hear people waiting in secure rooms for five hours or more with very little to eat and without possibilities to freshen up, and no information on the next stage in the process. The long hours of waiting and the resulting anxiety is the perfect recipe for unrest and disturbances at

UNITED KINGDOM

- OPCAT ratification: 10 December 2003
- NPM designation: 31 March 2009
- NPM designated: 20 bodies, coordinated by Her Majesty's Inspectorate of Prisons for England and Wales (HMIP)
- Immigration detention across the UK is monitored by HMIP and the Independent Monitoring Boards, with other NPM bodies' members focusing of health and education
- HMIP developed specific criteria (expectations) to monitor the conditions for and treatment of immigration detainees

processing centres. High risk convicted offenders with deportation orders were often housed in the same facilities as asylum seekers. More often than not, asylum seekers got caught in violent incidents instigated by convicted criminals awaiting deportation with nothing to lose if they did not follow the rules. Habeas corpus was virtually unheard of in the immigration removal centres. Often, new arrivals (asylum seekers) needed to prove their reasons for claiming asylum. However, with insufficient means of communication and a heavily restricted Internet service, it was nearly impossible for them to gather the required evidence to win their cases. I noticed a wide variation between centres run by staff trained under the prison regime, such as Dungavel, and staff trained through private contractors, such as Harmonsworth. Centres with experienced staff, such a Dover, were more humane environments.

I have worked with HMIP as a consultant inspector and supported it with pre-inspection research. In my view, the inspection methodology is a well thought out process with five key sources of evidence: observation, detainee surveys, discussions with detainees, discussions with staff and relevant third parties, and documentation. Through my experience with HMIP, I have gained a holistic understanding of the challenges involved in managing and processing high volumes of asylum seekers. Before my collaboration with HMIP, I did not have a full appreciation of the rigorous nature of inspections, or the extensive list of interested parties referencing the reports. While I was detained, I did not feel I could make use of the internal complaint procedures or of the Independent Monitory Body's complaint boxes. Later, I observed first hand that inspectors were made aware of

individual (or group) complaints or grievances. HMIP has full access to complaint files and, often, this can point inspectors in the direction of particular areas.

I think that HMIP has an impact mainly through research and factually based guidance and recommendations published in a report. The report, accessible to the public, can then be used by decision makers and other interested parties to promote positive change and progress.

One of the areas of interest for me as a consultant inspector was the management of risk for asylum seekers who were returned to countries with a known risk of malaria. I am originally from a Sub-Saharan African country with a high risk of malaria and I am aware of the grave dangers posed by this disease. While I was a resident in one of the immigration centres, stories circulated of people with lowered immunity to malaria, subsequently succumbing to the disease. This caused a great amount of distress amongst asylum seekers. One of the inspections I was involved with, a full announced inspection of one of the largest immigration removal centres in March 2010, revealed that there was no provision of anti-malaria drugs for detainees being removed to countries with a known risk. A follow up unannounced inspection was carried out to the same centre in September 2011. The report revealed that only immune-compromised detainees were provided with anti-malarial medication. HMIP repeated the recommendation and a third inspection, conducted between May and June 2013, revealed that the centre had partially achieved the supply of anti-malarial drugs.

This is one of many examples demonstrating the commitment of HMIP to fulfil its OPCAT mandate and how recommendations by HMIP can have a positive impact on asylum seekers' health and wellbeing.

Photo: Croatia NPM

REFUGEE CRISIS. Since 2015, an unprecedented number of asylum seekers and migrants arrived in Europe, posing new challenges for the work of National Preventive Mechanisms. The Croatian NPM has closely monitored the key points for the movements of refugees as well as the facilities where they have been held.

Detention of refugees and asylum seekers – a particular challenge

National Preventive Mechanism, Croatia

Over the years, the Croatian Ombudsman, designated as the NPM in 2011, has increased its capacity to carry out visits to places of deprivation of liberty on a more regular basis and to monitor different types of places, including immigration detention facilities and, most recently, care homes for elderly people. In 2015, due to the refugee crisis in the region, the NPM decided to dedicate large part of its work to monitor the situation of refugees and asylum seekers in the country, while continuing to make visits to other places of detention.

'The NPM visited border crossings, railway stations, police stations, registration centres and facilities where refugees were accommodated, paying particular attention to the treatment of persons in situation of vulnerability'

In September 2015, the so-called 'Balkan route' followed by refugees going from Greece and Macedonia to the Hungarian border diverted to Croatia. The Croatian Ombudsman, which performs the role of NPM, reported that more than 500'000 refugees passed through Croatia between September and December 2015.

Before the first refugees arrived in Croatia, the NPM organised an expert meeting at the parliament, gathering authorities, international organisations and civil society organisations. The meeting was an important step to foster cooperation and to exchange information on the state response to the challenges posed by a potential crisis in the country. The NPM also visited immigration centres to gather information about preparations for the arrival of a large number of people.

After the arrival of the first refugees in the country, the NPM closely monitored the key points for their movements as well as the facilities where they were held. The NPM also established cooperation and regular contact with the relevant

CROATIA

- OPCAT ratification: 25 April 2005
- NPM designation: 2 February 2011

National Preventive Mechanism:

- Ombuds Institution
- Working since 2012
- NPM Act amended in April 2015, enabling cooperation with five associations and 15 independent experts
- Member of South-East Europe NPM Network

authorities, international organisations, local communities and NGOs, including those working around the clock in the refugee camps. Within a three month period, the NPM carried out 26 unannounced visits to 17 locations where refugees stayed, both day and night. It visited border crossings, railway stations, police stations, registration centres and facilities where refugees were accommodated, paying particular attention to the treatment of persons in situation of vulnerability, such as unaccompanied children, persons with disabilities, elderly people and families.

Although some of the problems identified by the NPM during its visits were not immediately addressed by the authorities, due to insufficient capacities or lack of agreement between countries, several improvements were made, including on the provision of information, food and accommodation to refugees, treatment of groups in situations of vulnerability, and availability and quality of healthcare.

Exchanges with neighbouring NPMs

The NPM also benefited from the exchange of experiences with neighbouring countries. As a member of the South-East Europe NPM Network, the Croatian NPM discussed and shared practices and challenges with other NPMs on issues linked to the refugee crisis in the region, the treatment of asylum seekers and forced return of foreigners.

The South-East Europe NPM Network was established in March 2013 by a number of NPMs. In only a few years of existence, the network has become a reference platform for NPMs of the region and a source of inspiration for other regions as well.

TRANSITIONAL JUSTICE. With its cooperative and forward-looking approach, allowing for international exchanges, the OPCAT can be an important mechanism to guide reform processes that consolidate the rule of law and guarantee non-repetition of past-abuses.

Looking forward and contributing to democratic reforms

Mahjoub El-Haiba
Inter-ministerial Delegate for Human Rights, Morocco

Since 2004, the Kingdom of Morocco has been undergoing substantial reforms, in particular in the field of transitional justice. This has strengthened the process of democratisation and building and consolidating the rule of law. The fight against, and prevention of, torture through the adoption and implementation of the OPCAT plays an important role in this context. The Inter-ministerial Delegation for Human Rights of Morocco is a government structure, with the task to develop and implement policy for the protection and promotion of human rights and international humanitarian law.

'As part of the process to accede to the OPCAT and to designate the NPM, Morocco has drawn inspiration from international models and experiences'

When Morocco acceded to the OPCAT in November 2014, it became the fourth State party in the Middle East and North Africa region, following Lebanon, Tunisia and Mauritania.

Morocco's accession to the OPCAT should be seen in the framework of the implementation of the new Constitution from 2011, the recommendations from the Equity and Reconciliation Commission, advocating for opening places of deprivation of liberty to visits from national and international bodies, and from UN human rights mechanisms, including the Committee against Torture in 2009 and the Special Rapporteur on torture in 2012.

The accession process was the result of a broad public debate, to sensitize all stakeholders on the need for fighting and preventing torture. To create the

MOROCCO

- OPCAT ratification: 24 November 2014
- NPM designation: under discussion

best conditions for effective implementation of the treaty, various stakeholders, including civil society organisations, the National Council for Human Rights and relevant government bodies, took part in the discussions.

The OPCAT accession is founded on the particular interest of His Majesty the King, Head of State in Morocco, in the respect for human rights, the humane treatment of detainees and prison conditions. There is also an interest in strengthening cooperation and positive interaction with UN mechanisms, including those responsible for the prevention of torture. The importance of OPCAT accession also lies in the consolidation of the activities of existing national human rights institutions and mechanisms with the establishment of a new, independent and autonomous mechanism, to meet the expectations and concerns of civil society in relation to the prevention of torture.

Morocco has always been aware of the important role that the National Council for Human Rights will play in the implementation of the OPCAT. So far, it has assumed, de facto and de jure, the functions of an NPM and has carried out research, seminars and training on the modalities for effective implementation of the NPM mandate. As part of the process to accede to the OPCAT and to designate the NPM, Morocco has drawn inspiration from international models and experiences. It has also contributed to important initiatives welcomed by the international community, in particular the Convention against Torture Initiative, together with Denmark, Indonesia, Chile and Ghana. This is yet another confirmation of Morocco's commitment to fully implement the UN Convention against Torture.

First and foremost, the establishment of the NPM can contribute, directly and indirectly, to raising awareness and preventing torture. Secondly, it can lead to an improvement of the legal system and contribute to the harmonisation of national legislation with international standards. And finally, it can harmonize and reinforce the work of the different national actors involved in monitoring places of deprivation of liberty.

Photo: Office of the Ombudsman, New Zealand

ACCESS. NPM designation in New Zealand has led to a comprehensive system of monitoring of places of detention. It has opened up closed institutions to regular and independent scrutiny, in some cases for the first time. Through their access, the institutions that make up the NPM can identify issues that may not otherwise come to light.

New mandate opened health and disability facilities to monitors

National Preventive Mechanism, New Zealand

The NPM of New Zealand is composed of four institutions which monitor places of detention, each of them with a specific thematic mandate, and are coordinated by the Human Rights Commission. The Office of the Ombudsman, one of the four designated monitoring bodies, can visit prisons, health and disability facilities, immigration centres, and children and youth residences. Each year, the NPM bodies focus their work on a common thematic issue.

'Its new preventive mandate has provided the Ombudsman with free access to over 80 health and disability facilities'

In New Zealand, there was no independent monitoring of health and disability facilities until the Ombudsman was designated as one of the NPM bodies in 2007. Its new preventive mandate has provided the Ombudsman with free access to over 80 health and disability facilities, with a view to ensure that sufficient safeguards against ill-treatment are in place and that any risks, poor practices or systemic problems are identified and addressed.

Over the past three years, the Ombudsman has been questioning the use of controlling practices affecting the human rights of persons held in this type of places. In 2013, following visits to several forensic psychiatric facilities, the Ombudsman found patients being locked in their bedrooms overnight, due to outdated night safety procedures. It also observed that seclusion rooms continued to be used as bedrooms for service users who were disruptive and difficult to manage.

The Ombudsman brought these issues to the attention of the relevant authorities and also carried out follow-up visits to the facilities. As a result, the Ministry of Health is now in the process of publishing guidance on restrictive practices, such as night safety procedures in forensic units. The night safety 'blanket policy' was replaced with individualised safety plans. While the number of patients on night safety plans remained high in one of the facilities, the other facilities had abandoned the practice of night seclusion and patients were free to leave their bedrooms any time, night and day.

Addressing the vulnerabilities of youth in detention

Children and young people are one of the most vulnerable groups in detention, because of their age and stage of maturity, and the long term damaging effects of detention on their well-being and development. A lack of appropriate education and recreation activities, reduced stimulation and social isolation can be extremely distressing.

The Ombudsman has repeatedly raised concerns about the situation of young people deprived of liberty within the criminal justice system in New Zealand. In 2013 the Ombudsman highlighted the inadequate facilities available for young people at one particular youth unit. It reported that education and leisure activities were inadequate and that there were no employment opportunities. Some cells were very dirty and some staff seemed disengaged with the young detainees. The young people had to pay weekly contributions to supply food, prizes and some equipment for family days and sports days. On the weekends, they were locked in

NEW ZEALAND

- OPCAT ratification: 14 March 2007
- NPM designation: 21 June 2007

National Preventive Mechanism:

- Multi-body model
- Four monitoring bodies: Office of the Ombudsman; Independent Police Conduct Authority; Children's Commissioner; Inspector of Service Penal Establishments.
- Each monitoring body with competence on specific places of detention
- Coordinated by the Human Rights Commission
- Working since 2007

their cells during entire afternoons in order for staff to facilitate visits. Following the NPM's recommendations, some improvements were made to the environment and more activities became available. Finally, within a couple of months of the visit by the Ombudsman, the youth unit was closed and the young detainees were transferred to other centres. As one of the receiving units was not prepared to manage young people for a long period, the Ombudsman carried out an unannounced visit to this place in April 2014. It found that the young people were not allowed enough time out of their cells. The Ombudsman therefore carried out follow-up visits in October and November 2014 and January 2015, and expressed concerns about the reduced time spent out-of-cell and the minimal access to programmes and facilities. Following its recommendations, the Ombudsman was informed that the prison authorities were working to increase the opportunities for youth to participate in constructive activity.

Photo: Procuradoria Federal dos Direitos do Cidadão, Ministério Público Federal

JUDGES. Judges and prosecutors are key actors in the prevention of torture. They must be ever vigilant to the risks of using information obtained by torture in the cases that come to court. By upholding international standards and safeguards, judges can greatly contribute to reducing the risk of torture and other forms of ill-treatment.

Judges playing an important role in preventing torture

Edinaldo César Santos Junior
Judge in the state of Sergipe, Brazil

Edinaldo César Santos Junior was a member of the National Committee to Prevent and Combat Torture from 2014 to 2016. The Committee is made up of 23 institutions – eleven represent federal governmental bodies and twelve represent civil society organisations. The Committee forms part of the National System to Prevent and Combat Torture, along with the Brazilian NPM and state committees and mechanisms. Its strategic responsibilities and diverse and broad membership have allowed the Committee to expand, spread and publicise the actions of the mechanism and other bodies directly and indirectly involved in preventing and combating torture, and support the creation of committees and mechanisms at the state level.

'Being a member of the National Committee has undoubtedly had a positive impact on my work as a judge'

My work in preventing and combating torture began nearly 17 years ago, when, still as public defender, I defended a number of citizens who were victims of torture and abuse perpetrated by the Brazilian state. As a judge and representative of the Association of Brazilian Magistrates, I was appointed member of the National Committee to Prevent and Combat Torture, the inter-institutional partner of the National Mechanism to Prevent and Combat Torture. Its main powers involve interacting and coordinating with the mechanism, providing it with data and information and assisting it to implement its recommendations. During the past year, I assisted the mechanism in establishing a dialogue with the Brazilian judicial authorities. As the national mechanism was a new body created by a very recent

legislation, still little known by authorities, I played a role explaining its mandate to judges in states the mechanism visited.

Given Brazil's specific nature, as a federal republic with an almost continental dimension, a legislative decision was taken to create a national torture prevention mechanism, which would in turn enable the creation of similar bodies at each state that comprise the federation. One of the committee's undertakings was therefore to support and help create state level mechanisms. This was a personal challenge: creating and implementing a local mechanism in Sergipe, the state where I am based and work as a magistrate. Sergipe was the only state in the northeast of Brazil that had no legislation providing for a committee and state mechanism. Aware of the huge difficulty this presented, we set up meetings with other civil society entities and began to work on a draft law with other government officials. We also had the personal commitment of the governor of Sergipe, who himself had been a victim of torture during Brazil's dictatorship (1964–1985). On 13 July 2016 the law was published, which set up the committee and mechanism in Sergipe to prevent, combat and eradicate torture and other ill-treatment or cruel, inhuman or degrading punishment.

The participation of the Association of Brazilian Magistrates in the national committee was particularly relevant as it showed the Brazilian society that a judge, as a citizen and through his or her professional body, has social concerns and could take part in discussions on important matters such as combating torture. It showed that a judge could have a direct impact on public policies, making a contribution as someone on the frontline of the system, who in his or her daily

BRAZIL

- OPCAT ratification: 12 January 2007
- NPM establishment at the federal level: 2 August 2013

National System to Prevent and Combat Torture:

- National Mechanism to Prevent and Combat Torture, a new specialised body performing the OPCAT mandate
- Working since April 2015
- National Committee to Prevent and Combat Torture, a new body comprised of eleven Ministries of the federal government and twelve civil society organisations
- Local Committees to Prevent and Combat Torture
- Local Mechanisms to Prevent and Combat Torture, performing the OPCAT mandate at the state level
- Local Mechanisms working in the states of Rio de Janeiro and Pernambuco

work witnesses a range of abuses for which solutions must be provided. This was my first challenge at the committee: to demonstrate that the citizen-judge represents civil society and has the duty and power to work closely with it, beyond his or her daily judicial activity. Simply put: someone who can and must discuss the public policy on preventing and combating torture by the Brazilian state.

Being a member of the national committee has undoubtedly had a positive impact on my work as a judge. I was able to listen to claims, grievances and suggestions from civil society on improving the public policy on combating torture in the country, including with regard to magistrates. I´d like to mention the Custody Hearing Project, launched in 2015 by the National Justice Council. Initially, it was widely applauded but, once expanded across the country, it did not achieve the objective that civil society had hoped for. It was soon noted that custody hearings were only being used to address prison overcrowding and were not effective in preventing and suppressing the use of torture upon arrest. This led to an initiative to provide judges with continuous training on custody hearings, especially on preventing torture. Following talks with the APT, the Association of Brazilian Magistrates approached the council to propose national training for magistrates. As a result, in June 2016, the Association of Brazilian Magistrates, the National Justice Council and the APT, with support from the International Bar Association, organised the Second Seminar on Torture and Violence in the Prison System – the Role of the Judiciary in Combating Torture, which gathered judges from all over the country.

I have been a member of the committee for two years. It has been a fruitful and remarkable time, and has made me an even more committed human rights activist.

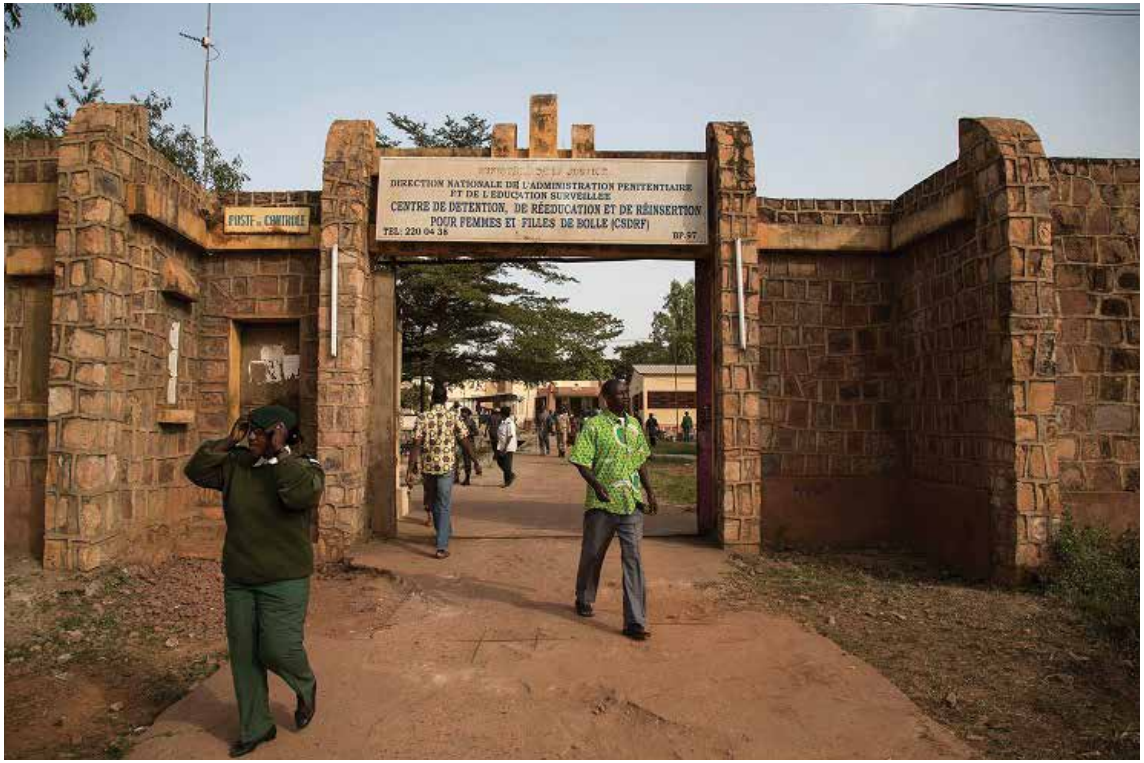

Photo: MINUSMA

HEALTH. Poor conditions of detention and a lack of health care can, under certain circumstances, amount to ill-treatment or even torture. NPMs, through their visits and recommendations, help protect the right to health – especially important for marginalised and vulnerable groups with specific health needs.

Monitoring visits helped improving healthcare in prisons

National Preventive Mechanism, Mali

Thanks to its mandate as an NPM, the National Human Rights Commission of Mali has found it easier to access various places of deprivation of liberty and detainees. However, there are still many challenges for the commission to effectively carrying out its mission as NPM, such as inadequate budget and insufficient staff. To comply with the Paris Principles and strengthen the NPM role of the commission, its law was completely revised in 2016.

'Women's and children's divisions have been created in some detention centres, along with specialised detention centres'

Visits conducted by the National Human Rights Commission of Mali to places of detention, in its capacity as an NPM, have contributed to positive changes in the treatment of persons deprived of liberty and to improvements in detention conditions. In several of its reports on prison visits, the commission has condemned the absence of healthcare services in places of deprivation of liberty, which presents an obstacle to detainees' right to healthcare. The commission's recommendations to the authorities on this issue have led to healthcare services being set up in some detention centres.

Another problem, found by the NPM, was that there was no separation of categories of detainees. Men, women and children were detained in the same place. After its visits and recommendations made to the authorities, the commission has been able to observe concrete changes. Women's and children's divisions have been created in some detention centres, along with specialised detention centres for women and children.

MALI

- OPCAT ratification: 12 May 2005
- NPM designation: March 2006

National Preventive Mechanism:

- National Human Rights Commission
- November 2009: new legal basis of National Human Rights Commission
- July 2016: new revised law of National Human Rights Commission adopted by Parliament to make it compliant with the Paris Principles and strengthen NPM mandate

Collaboration with judges to improve detention conditions

Thanks to the commission's cooperation with some actors in the judicial sector, such as judges, a number of unannounced visits have been organised to detention centres in Kangaba, Ouélésébougou, Bamako, Kati, and other towns. Judges have also started consulting the commission on the situation in detention centres located in their areas. The commission has followed up by organising unannounced visits in these towns and has held extensive discussions with the judges to draw up a list of proposed solutions to any problems observed.

For example, a recent visit to a prison resulted in the commission lodging a complaint with the Ministry of Justice and Human Rights on the large number of detainees awaiting trial at the criminal court. These cases were in turn accepted and heard at the Bamako Criminal Court's next session, relieving some of the pressure on the overcrowded prison.

Photo: Grand Council of the Canton of Vaud

PARLIAMENTARIANS. Through monitoring visits, parliamentarians can play an important role in ensuring transparency and improving conditions and treatment in places of detention. They are key allies for NPMs established under the OPCAT.

Parliamentary commissions as allies to prevent abuses

Mireille Aubert
President of the Commission of Visitors of the Grand Council of the Canton of Vaud, Switzerland

The Commission of Visitors of the Grand Council of the Canton of Vaud (cantonal parliament), in Switzerland, was set up in 2012. It is composed of seven members, supported by experts, and its main mission is to ensure that detention conditions for detainees comply with Swiss legislation and international obligations. The commission, which has been chaired by Mireille Aubert since its establishment, regularly visits prisons, police stations and immigration detention centres in the canton, as well as any Swiss establishment where there are detainees who have been sentenced by a court in the Canton of Vaud. In addition to the Canton of Vaud, similar commissions have been established in Ticino and Geneva.

'We are still a long way off a system in which the detainees can benefit from the detention regime they are entitled to'

It is impossible to imagine what prison life is like if you haven't experienced it. The commission is therefore very important because it gives immediate access to this reality. Our reports enable parliamentarians, who pass the laws and can grant pardons, to gain a better understanding of this extremely closed world, and help them to develop an informed opinion. I have chaired this commission since it was set up in 2012. I've always been concerned about justice issues, perhaps because I grew up in a family with several lawyers. I spent the first ten years of my political career as a member of the Committee on Pardons, which was my first real contact with the prison world. Visiting a friend who was an inmate also drew me in to this particular world. I felt that we were inflicting a double punishment on prisoners by denying them the right to be forgotten, and this finally convinced me to join the Commission of Visitors.

SWITZERLAND

- OPCAT ratification: 24 September 2009
- NPM establishment: 20 March 2009

National Preventive Mechanism:

- National Commission for the Prevention of Torture
- New specialised institution
- Working since 2010
- 12 members and Secretariat

Since it was set up, the commission has helped to improve prison conditions, especially in police station holding areas. We have also addressed the conditions for transferring detainees to hospitals and, following our interventions, there is now greater respect for their dignity. However, there are still many challenges. For instance, we are still a long way off a system in which detainees can benefit from the detention regime they are entitled to. There are still too many detainees serving their sentences in remand centres.

In our work, we like to see ourselves as 'partners' of the National Commission for the Prevention of Torture (NCPT), the Swiss mechanism to prevent torture set up under the OPCAT. The NCPT's reports are very important for our work as they offer guidance on areas to be monitored and allow us to prepare specific and targeted questions for our own visits. We also invited the chair of the commission to one of our meetings to explore avenues for collaboration, and we also drew the NCPT's attention to observations we had made on the establishments they were planning to visit. Whenever we visit a prison or another detention centre, we first consult the NCPT's most recent report and, during the visit, we check if the recommendations have been followed. This gives us much more weight.

The Swiss mechanism for the prevention of torture clearly has an added value, as its mandate covers all places of deprivation of liberty in the country. Furthermore, its members can interview anyone they wish, whenever they wish. The mandate also allows them to visit establishments freely and independently. Ultimately, the NCPT's thematic reports and observations provide a unique platform for a range of topics that are often unknown to the wider public.

Photo: Parliamentary Ombudsman Norway

RISKY PRACTICES. Through their preventive mandate, NPMs play a key role in addressing the risk factors that relate to torture and ill-treatment. The NPM of Norway has contributed to reducing the use of risky practices in places of detention, such as body searches, means of restraint and the use of force.

Preventing suicide in prison and police custody

National Preventive Mechanism, Norway

The new NPM mandate has increased the ability of the Norwegian Parliamentary Ombudsman to visit places of detention and give recommendations to authorities to address challenges and risk factors for torture and ill-treatment in several detention settings. The NPM has established an advisory committee, which includes NGOs with expertise in areas that are relevant to the NPM's preventive work.

'The hospital introduced a new procedure for ensuring that patients receive verbal and written information about use-of-force decisions and the grounds for each decision'

Transfers between different facilities are critical situations for persons deprived of liberty. Thanks to their broad preventive mandate, NPMs are well placed to monitor the transition between different places of detention and address the risk factors related to these processes. In October 2014, shortly after the Norwegian NPM visited a police custody facility, one of the detainees committed suicide after being transferred to a prison. The NPM therefore followed up with a visit to the prison and was able to give some concrete recommendations about suicide prevention measures in both police custody and prison settings.

As a result, the police devised a procedure to keep records of each detainee's condition during the period of detention and whether or not the detainee had seen medical personnel, and to ensure information flow and cooperation during the transfer of detainees to prison. The prison has taken similar measures to assess the risk of suicide among new detainees. It has applied for funding to train staff working with admission and registration of new detainees on suicide prevention and wants to implement a new system of in-house instructors. Meetings were also

held between a regional office of the Correctional Services and selected prisons and police districts to improve the exchange of information between police custody facilities, the prosecuting authority, sentence offices and prisons.

A focus on risk areas: body searches and use of force

In prisons, body searches may be necessary measures for security reasons. However, due to their intrusive nature, they can be degrading and should therefore be conducted only when strictly necessary and in a manner that respects the detainee's dignity. During a visit to a prison in September 2014, the NPM found that detainees were always stripped naked and had their clothes removed before being confined in a security cell. It therefore recommended that body searches should not be routine practice and that detainees should never be confined naked in a security cell without an individual security assessment. It recommended that inmates should be given their own clothes back after a body search, or be given suitable alternative clothes, so that they do not have to be naked in the security cell.

As a result of the NPM recommendations, the prison authorities have now set up new procedures for security cells. An individual assessment of each detainee is carried out and detainees can keep their clothes after a body search. The prison also has plans to purchase rip-resistant/suicide prevention clothing. Following the NPM's visit, the Directorate of the Correctional Service sent letters to its regional offices clarifying the practice for clothing in security cells.

NORWAY

- OPCAT ratification: 27 June 2013
- NPM designation: 21 June 2013

National Preventive Mechanism:

- Parliamentary Ombudsman
- NPM unit
- Working since 2014
- Advisory committee: 15 representatives of civil society organisations and professional groups working with persons deprived of their liberty

The use of force may lead to serious physical and psychological harm to the person concerned. It should therefore be strictly regulated. During its visit to psychiatric sections of a hospital in February 2015, the NPM focused on the use of coercive measures and made recommendations on use-of-force decisions. As a result, the hospital introduced a new procedure for ensuring that patients receive verbal and written information about use-of-force decisions and the grounds for each decision. The record entry is now enclosed with the letter to the patient, so that the patient receives information about why the decision has been made. The hospital has also decided to scan use-of-force records into each patient's electronic record, to make all the information about the use of coercive measures available to the patient. The patient will also have an opportunity to provide comments, which will also be scanned and entered in the electronic patient record.

In September 2016, as a result of the NPM's recommendations following visits to several mental health institutions, the Norwegian Directorate of Health sent a letter to all regional health authorities and mental health supervisory commissions, underlining that patients shall always receive the record entry describing the grounds for a use-of-force decision together with the administrative decision. This information shall also be given verbally.

Putting prevention into practice

10 years on: the Optional Protocol to the UN Convention against Torture

The Optional Protocol to the United Nations Convention against Torture, the OPCAT, entered into force in June 2006. Over the past decade, the OPCAT has contributed to real changes in the prevention of torture and ill-treatment worldwide. The simple fact that States have provided external and independent experts with access to their places of detention, on a regular and unannounced basis, is a remarkable achievement in itself.

This booklet offers a snapshot of the positive changes brought about by the OPCAT. It provides an insight into what the prevention of torture and ill-treatment means in practice, from the perspective of those directly involved: State authorities, the United Nations, national preventive mechanisms, civil society and persons deprived of liberty.

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