



association for
the prevention
of torture



SUMMARY REPORT OF TRAINING FOR CSOs ON THE UN OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE (OPCAT) AND ITS IMPLEMENTATION

IN RWANDA

Kigali, Rwanda

30 and 31st May 2017

Overview

The Republic of Rwanda formally ratified the Optional Protocol to the Convention against Torture (OPCAT) on July 2015. In accordance with the terms of the OPCAT States parties should designate a National Preventive Mechanism (NPM) within one year of ratifying. Although the Government of Rwanda has yet to formally designate an NPM it is in the process of determining how this obligation can be met and the Ministry of Justice has commenced the process of developing a draft law to designate an NPM and set out the mandate and powers of this body.

In recognition of the important role played by CSOs in preventing torture and advocating for the effective implementation of the OPCAT a two day training workshop was organised jointly by the Association for the Prevention of Torture (APT) and the Legal Aid Forum (LAF). The training session brought together over 30 representatives from CSOs with aim of building capacity to enable CSOs to advocate for and monitor the effective implementation of the OPCAT in Rwanda.

DAY ONE

SESSION 1: Introductory Overview on the Concept of the Prevention of Torture

Presented by: Jean-Baptiste Niyizurugero, APT

This session focused on States' obligations under international law to prohibit and prevent torture and other ill-treatment. It was emphasised that considering the particular importance placed on the prohibition of torture the traditional obligations of States **to respect, to protect and to fulfil** human

rights are complemented by a **further obligation to prevent** torture and other forms of ill-treatment. It was recalled that Article 2.1 of the UNCAT places an explicit obligation on States parties to prevent torture and other forms of ill-treatment.

It was noted that the development of a comprehensive strategy for torture prevention requires an integrated approach, composed of three interrelated elements:

1. a legal framework that prohibits torture;
2. effective implementation of this legal framework; and
3. mechanisms to monitor the legal framework and its implementation.

Discussion:

Discussions in plenary mainly centred on the definition of torture and other forms of ill-treatment and it was recalled that in accordance with Article 1 of UNCAT torture can be physical and/or psychological suffering.

It was noted that although the definition of torture under Article 1 of UNCAT specifically relates acts of torture to public officials, under Rwandan domestic law this link is omitted from the definition of torture in the Penal Code leaving open the interpretation that non-state actors could be charged with acts of torture under Rwandan law. Although it was noted that Article 177 of the Penal Code provides that if torture is committed by a Judicial Police Officer or a Prosecutor or any other security service officer or civil servant the maximum penalty shall be imposed.

SESSIONS 2 and 3: Overview of OPCAT, the NPMs and SPT

Facilitated by: Jean-Baptiste Niyizurugero (APT) and Debra Long (HRIC, University of Bristol/A5I), APT Consultant

These sessions were aimed at providing an overview of the obligations of the Government of Rwanda as a party to the OPCAT and explaining the preventive approach and mandate of the bodies established by the treaty.

It was noted that the purpose of the OPCAT is to help States implement their existing obligations to prevent torture and other ill-treatment. It was recalled that the OPCAT is different from other UN treaties and optional protocols in that it does not focus on individual communications or State Party reports. Instead it is an 'operational treaty' that establishes a system of visits to places of detention carried out by national bodies, 'National Preventive Mechanisms' (NPMs) and an international body, the UN Subcommittee on Prevention of Torture (SPT). The focus of the OPCAT is therefore on prevention rather reaction, namely to address problems before they get worse.

It was explained that the approach of the OPCAT is based on experience that opening places of detention up to regular visits by independent bodies is an effective way to prevent torture and improve conditions of detention. The aim is to create a constructive dialogue between the OPCAT bodies and the authorities in order to improve treatment and conditions of detention.

The term 'places of detention' is defined broadly by the OPCAT in order to ensure the full protection of all persons deprived of liberty. This means that the SPT and NPMs can visit not only prisons and

police stations but also other places where people are deprived of their liberty such as detention centres for migrants and asylum seekers, transit zones in airports and check-points in border zones, detention facilities in military force stations; children's homes, as well as medical and psychiatric institutions. It also includes places where people "may be deprived of their liberty" and therefore extends to unofficial places of detention, where people are particularly at risk of torture and other ill-treatment.

Overview of NPMs

It was explained that the OPCAT does not specify any particular model for an NPM; each State party must decide how to put in place an effective NPM. However, the OPCAT does set out the minimum powers and guarantees to be granted to all NPMs namely they must be functionally independent; be given sufficient resources to carry out their work; granted access to any place of detention and to interviews persons of their choice ; and granted access to relevant information.

The work of the NPMs therefore covers five main areas:

- Visiting places of detention
- Making recommendations aimed at the improvement of the treatment and conditions of people deprived of their liberty
- Providing comments on existing and draft legislation and helping to advise on relevant government policies
- Engaging in educational and awareness raising activities
- Training development and participation (i.e. technical information and clarification)

Overview of the SPT

The international aspect of the preventive visiting system established by the OPCAT is carried out by the SPT. This is an UN treaty body comprising 25 members appointed by and from States parties. Like all treaty bodies, the members of the SPT serve as independent experts.

It was noted that unlike other UN human rights bodies the SPT does not need to seek consent before deciding to visit a State party to the OPCAT; the consent of the State is deemed to have been given upon ratification of the OPCAT (although some notification prior to a visit will be needed to make logistical arrangements such as obtaining visas etc.)

The SPT operates by visiting places of detention in any State party to the OPCAT and making a confidential report to the authorities with recommendations. The SPT report remains confidential unless the State party concerned gives its consent to publication, or publishes part of the report or fails to cooperate with the SPT. It was explained that the concept of 'confidentiality' is designed to establish a constructive dialogue with the State party concerned in an effort to encourage implementation of its recommendations. This approach is influenced by the experience and work of the International Committee of the Red Cross.

In addition the SPT has an important role to play in relation to NPMs; it is granted a specific mandate to provide advice to the authorities on the establishment of NPMs, and to have direct contact with NPMs to assist in their effective functioning.

In light of the above information it was recognised that as a State party to the OPCAT the Government of Rwanda has a number of obligations namely:

- To designate/establish an NPM with powers and resources as set out in OPCAT
- To publish and disseminate annual reports of the NPM
- To allow visits at any time by the SPT and NPM to places of detention in Rwanda
- To consider recommendations of the NPM and SPT
- To enter into dialogue with SPT and NPM to implement recommendations

It was noted that the Government of Rwanda is currently in the process of deciding how best to designate/establish an NPM. This was discussed further in session 4.

Discussions:

Questions were raised in relation to examples of the types of NPMs that have been established in other countries. It was explained that there are four key trends that have been observed internationally:

- (i) NPM as a new specialised mechanism
- (ii) NPM under an existing institutions (NHRI or Ombudsman)
- (iii) NPM as an existing institution combined with civil society organisations (NHRI or Ombudsman Plus model)
- (iv) a combination of existing institutions (multiple bodies model).

Within Africa, States parties have tended towards either establishing a new body or placing the NPM mandate under the NHRI.

Discussions also focused on the role of NGOs in the implementation of the OPCAT and work of the NPMs. It was noted that NGOs have a very important role to play to advocate for the establishment of an NPM in conformity with the OPCAT, and once established NGOs can not only provide support to the NPM but also, crucially, monitor and comment on its effective functioning.

SESSION 4: Implementation of the OPCAT in Rwanda: Promotion and Support

Presented by: Andrews Kananga, Executive Director, Legal Aid Foru, Eddy Mazimpaka, MINIJUST and Christine Umubyeyi, NCHR

This session provided information on initiatives that the MINIJUST has undertaken so far in relation to implementation of the OPCAT. It was noted that various consultations have already taken place as part of the process for the designation of an NPM. This has included a Study visit to Mauritius undertaken by a representative of MINIJUST and the NCHR in order to learn from their experience as a country with an NPM. It was noted that a roadmap for the designation process has been prepared and MINIJUST has established a Working Group to draft the law for the designation of the NPM.

It was noted that the current draft law takes the position that a unit will be established within the NHRI with the mandate to carry out the NPM functions. Some of the key aspects of the draft NPM law include:

- The NPM will be within the NCHR. It will have powers to carry out regular visits to all places of detention, to issue recommendations, and to formulate observations on existing or draft laws.
- The NPM will be comprised of 1 Commissioner of the NCHR and staff
- The NPM will have its own budget and staff separate from the Commission
- The Internal rules of the NPM will be integrated into those of the Commission

Discussions:

The discussions that took place focused on concerns with the proposal to place the NPM within the NCHR and not as a separate specialised separate body. It was noted that this proposal was based on previous consultations on how to implement the OPCAT in Rwanda, although further consultations with stakeholders, including CSOs are planned.

In response to specific questions relating to the expected qualifications and background of the NPM Commissioner and staff it was stated that the selection process for the NPM Commissioner would be governed by the provisions in the NCHR legislation.

Concerning specific aspects of torture and other ill-treatment questions were raised in relation to whether the NPM would have the mandate to tackle domestic violence. It was noted that other bodies are already involved in this issue and it is unlikely to be one of the first priorities for the NPM. In addition a question was asked as to whether the NPM would be able to deal with the issue of non-gazetted or secret places of detention? It was noted that the OPCAT does grant NPMs, and the SPT, the power to visit unofficial palces of detention although the practical difficulties of carrying out such visits was acknowledged in the discussions. It was recommended that any person who has information on such places should provide it to relevant authorities and institutions including the NCHR that can deal with it currently and not wait for the establishment of the NPM

DAY TWO

Following a recap of the key points from the initial day a number of possible CSO initiatives to support the implementation of OPCAT were identified. These included:

- Further training and awareness raising activities on the OPCAT for CSOs;
- Producing materials to simplify the UNCAT and OPCAT to make them accessible to all;
- Translation of UNCAT and OPCAT into Kinyarwanda
- Sensitisation activities through various outreach programmes of CSOs such as: Inteko z'Abaturage, the meetings after umuganda, legal aid week, umugoroba w'ababyeyi, governance month; radio talk-shows, theatres etc.

SESSION 5: CSO STRATEGIES

Facilitated by: Lillian Artz, (UCT/A5I), APT Consultant.

This session focused on CSOs intervention opportunities on the prevention of torture and other ill-treatment.



A small group exercise was undertaken to start the process of exploring and identifying strategies and needs to help build the capacity building of CSOs to engage with the implementation of the OPCAT, as well as torture prevention more generally.

Observations and recommendations from small group exercise:

A range of strategies and capacity building requirements were identified by the participating CSOs through the small group exercise. It could be determined from this feedback that there one of the priorities is the provision of training on strategies to prevent violence, including torture and other ill-treatment, supported by capacity building training on evidence-based advocacy to transform strategies into fundable projects.

Final Remarks and next steps

The event was officially closed by Mme Providence Umurungi, MINIJUST who confirmed that there will be civil society consultation on the NPM draft Bill and acknowledged the important contribution to be made by CSOs in relation to the effective implementation of the OPCAT.

The APT together with its partner organisations will plan to organise a three day workshop for CSOs to provide training for CSOs on using evidence-based advocacy in the context of the prevention of violence, including torture and other ill-treatment. The workshop will be held towards the end of 2017 in Rwanda.