

Independent monitoring of human rights in places of detention

Report

*Regional seminar for the Middle East and North Africa
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1. Introduction

Monitoring of places of detention as a means to prevent torture is an issue which has been given relatively limited attention in the Middle East and North Africa (MENA). While most States in the region are parties to the UN Convention against Torture (UNCAT)¹, none of them have yet signed the Optional Protocol to the UN Convention against Torture (OPCAT), which sets-up a global system of independent visits to places of detention by international and national bodies in order to prevent torture and other ill-treatment. However, in recent years national human rights institutions² and civil society organisations in the Middle East and North Africa have played an increasing role in the prevention of torture.

These efforts have started to bear fruit in several countries of the region, where governments have agreed to open-up places of detention to independent scrutiny and started to engage in a dialogue with civil society about torture prevention.

With the overall objectives of further strengthening the prevention of torture in the MENA region, representatives from thirteen countries³ in the Middle East and North Africa came together for a four day seminar on Independent Monitoring of Human Rights in Places of Detention in Amman in September 2007.

The seminar was organized by Jordan's National Centre for Human Rights, Mizan Law Group for Human Rights, the Association for the Prevention of Torture (APT

and Rehabilitation and Research Centre for Torture Victims (RCT).

The objectives of the seminar were:

- 1) To exchange knowledge and experience about existing systems and practices of monitoring places of detention: Gaining access, conducting detention monitoring visits and bringing about change.
- 2) To identify strategies to strengthen the effectiveness of monitoring: Process of exchange and mutual learning.
- 3) To develop recommendations on monitoring places of detention: Identifying good practices and recommendations.
- 4) To promote ratification and effective implementation of the Optional Protocol to the UN Convention against Torture (OPCAT): National mechanisms for promoting the OPCAT and global trends.

The seminar addressed these themes with the help of national experts and human rights defenders from National Human Rights Institutions (NHRIs), NGOs, parliamentary committees and a Ministry of Human Rights. The seminar also benefited from the presence of international experts from the UN Sub-Committee on the Prevention of Torture, the UN Special Rapporteur on Torture, the Office of the UN High Commissioner for Human Rights, the International Committee of the Red Cross, the Bulgarian Helsinki Committee and Amnesty International.

By analysing diverse experiences of pre-

1) States Parties to the UN Convention against Torture in the Middle East and North Africa: Algeria (1989), Bahrain (1998), Egypt (1996), Israel (1991), Jordan (1991), Kuwait (1996), Lebanon (2000), Libya (1989), Morocco (1993), Qatar (2000), Saudi Arabia (1997) Syria (2004), Tunisia (1988) and Yemen (1991), cf. www.ohchr.org/english/countries/ratification/9.htm

2) National Human Rights Institutions in the MENA region can be found in: Algeria, Egypt, Iran, Jordan, Morocco, Palestine, Tunisia and Qatar, cf. www.nhri.net/nationaldatalist.asp

3) Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Morocco, Palestine, Syria, United Arab Emirates, Yemen and Qatar.

venting torture in places of detention and by conducting an on-site training visit to a place of detention in Jordan, the seminar succeeded in extracting lessons learnt and making recommendations to further enhance the existing approaches and methods in detention monitoring. The seminar also represented a first step towards establishing a regional network of organisations which are engaged in detention monitoring.

The seminar was an important development in the MENA region, a step towards convincing authorities to open up their prisons and other places of detention to external scrutiny, and to encourage human rights monitoring across the region.

The event was the first of its kind in the region, and the participants from all countries recognized the need to meet and exchange experiences. Participants also agreed that States in the region must identify strategies to strengthen the protection against torture, amongst others by acceding to the Optional Protocol to the UN Convention against Torture (OPCAT).

The seminar consisted of plenary sessions composed of presentations and working group sessions, during which participants elaborated on recommendations based on their experiences. It also included a training visit to a prison, which led to a series of recommendations on how to conduct a monitoring visit. The report sums up the content of the presentations and lists the recommendations as established by the working groups and in the plenary session after the visit.

The report reflects the variety of opinions of the participants of the seminar and not necessarily those of the organisers of the seminar.

The NCHR, Mizan Law Group, the APT and the RCT would like to express their gratitude to the Jordanian authorities

for their support of the seminar and to the Danish Ministry of Foreign Affairs for its funding of the event. Finally, the organisers would like to extend particular thanks to Ms. Aida Hudson and Ms. Badia El Koutit for their tireless efforts in assisting with the organisation of the seminar.

2. Monitoring human rights in places of detention

By way of introduction the Association for the Prevention of Torture (APT)⁴ highlighted that one of the best ways to prevent ill treatment in places of detention, is by monitoring such places. Starting by reminding participants that international human rights law obliges States to prevent torture, the APT stressed that detention monitoring is one of the main elements in the torture prevention system. Other preventive measures include legal and cultural norms for the prohibition of torture and the effective implementation of these norms. Control mechanisms need to assure that this is the case. Such control mechanisms include internal inspection mechanisms and the judiciary that often has a role to visit and inspect places of detention. Finally, these need to be completed by visits conducted by independent organizations.

The APT highlighted that monitoring prevents torture through two mutually reinforcing means. On the one hand, the members of the monitoring body achieve improvements in treatment and conditions of detained persons through the building of a constructive dialogue with the detaining authorities. Secondly, the presence of independent outsiders has an important

4) For further details on the APT, please refer to: www.apr.ch/

deterrent effect. However, the key to success is that the independent visiting organization has the necessary guarantees and powers, such as the right to conduct regular visit to places of their choice at times of their choice. Further, monitoring teams must be thoroughly trained prior to conducting visits to any detention facility. The teams should have multidisciplinary capacities and should include, as a minimum, lawyers and doctors.

The APT identified four main challenges that monitors normally face and hoped that the participants of the seminar would come up jointly with strategies of how to overcome these challenges:

1. Obtaining necessary guarantees and powers.
2. Resources and tools for conducting the monitoring.
3. Protecting visitors and detainees against reprisals.
4. Obtaining changes through the implementation of recommendations.

The APT representative urged governments to cooperate with visiting bodies by granting them unrestricted access.

3. Monitoring places of detention in the Middle East and North Africa

3.1. The Moroccan experience:

Advisory Council for Human Rights

The Advisory Council for Human Rights (ACHR)⁵ was established in 1990. Until 1990, it had not been possible for any independent body to visit any place of detention in Morocco. Human rights organizations were unable to conduct visits without in-

forming and obtaining permission from the authorities concerned. The ACHR affirmed that governments and NGOs are responsible for monitoring places of detention, and recommended conducting visits jointly with NGOs.

The ACHR started a first tour of visits after it had received letters from prisoners to their parents describing conditions and treatment in prisons. These visits led to an initial report recommending the filling of gaps in the legislation. This led to a change of the Prison Code and the set-up of the Moroccan Prison Observatory.

The ACHR's main objective is to preserve the dignity of the prisoner. In Morocco, visits to places of detention often result in negative outcomes for detainees, if they are conducted in a non-professional manner and without the needed guarantees. If interviews with prisons cannot be conducted in private, signs of torture are always concealed. The same may happen if prison authorities are given prior notice of the visit.

A royal decree and an amendment to the Prison Code allowed an opening of channels: working groups were formed to protect human rights by conducting visits, training prison staff and developing new laws and monitoring treatment of prisoners. Positive results are now being achieved, including the removal of corrupt prison officials during and after visits, and holding perpetrators accountable if they are found to have tortured prisoners. Visits by monitoring bodies have resulted in the freeing of over 800 prisoners who were being detained unlawfully. The next step for the ACHR will be to gain access to police stations.

3.2. The Bahrain experience:

Bahrain Human Rights Society

After a long phase of negotiation with the Ministry of the Interior in Bahrain, a na-

5) For further details on the ACHR, please refer to: www.ccdh.org.ma

tional non-governmental organization, the Bahrain Human Rights Society (BHRS)⁶ obtained the permission to visit the main male prison in Bahrain in November 2005. BHRS considers this as an historical achievement. In order to obtain this permission, the BHRS wrote a series of letters to the government and was supported by a media campaign.

The visit to the Jaw prison was conducted by a multidisciplinary team composed of 13 members of different professional backgrounds. They included lawyers, doctors, social experts and nurses. In preparation for the visit, the BHRS provided the members of the team with training on how to conduct a prison visit.

The representative of the BHRS said that the visit had taken place under good conditions and without interference from the prison administration.

During the visit, the team of the BHRS looked into the following issues: separation of categories of prisoners, issues related to the penitentiary staff, personal hygiene, food and clothing available to prisoners, medical services and treatment available to prisoners with transmittable diseases. Other issues that the visiting team dealt with were frequency and conditions of family visits, other channels of communication with family and friends, access to media and recreational activities.

The speaker reported that unfortunately BHRS was not allowed to conduct a follow-up visit, because the authorities had not liked the fact that the findings of the BHRS were presented to the media before they had been discussed with the authorities.

6) For further details on the BHRS, please refer to: www.bhrs.org

3.3. *The Jordanian experience: National Centre for Human Rights*

The National Centre for Human Rights (NCHR)⁷ in Jordan conducts visits to places of detention in Jordan according to a programme agreed upon between the NCHR and the Government of Jordan. The NCHR has issued three reports on prison conditions so far, a fourth is scheduled for publishing for October 2007.

Up until this point, the NCHR has only been allowed to visit prisons, not police stations or intelligence service facilities. The NCHR is continuously striving to improve the conditions of access. Since 2006 the Centre has been allowed to conduct visits without giving prior notice to the prison administration, but the NCHR still has to coordinate with the Public Security Department.

The NCHR stressed that surprise visits have an important deterring effect. The NCHR has observed that if visits are announced it is difficult to observe the usual conditions in a prison. However, violations can still be detected, if the visiting team is composed of capable professionals. All information can be cross-checked during interviews in private.

The NCHR has formulated several sets of recommendations and has made important achievements, such as the closing of Al-Jafr prison in 2006. The Centre is also providing legal training to prison staff.

4. Gaining access to places of detention: experiences, strategies and recommendations

4.1. *Gaining access to places of detention*

The session was introduced by the director of the Bulgarian Helsinki Committee

7) For further details on the NCHR, please refer to: www.nchr.org.jo/

(BHC)⁸, Professor Krassimir Kanev. The BHC is one of the most experienced NGOs in the domain of detention monitoring world-wide. He observed that while National Human Rights Institutions (NHRI) and governmental bodies often have the right to visit places of detention on the basis of international regulations or NHRI-laws, NGOs, on the other hand, normally need to undertake longer campaigns of confidence building and/or exert pressure before they receive the permission to conduct a detention monitoring programme.

The Bulgarian Helsinki Committee stressed that the international human rights instruments and bodies have repeatedly called upon governments to permit regular visits by NGOs and other independent organizations, making reference to UN human rights instruments⁹, the jurisprudence of the UN Committee against Torture¹⁰ and guidelines of regional inter-State bodies. He defined the following three key criteria for assessing the conditions of access for NGOs:

- freedom to choose place, time and method
- ability to engage in serious fact-finding on the spot
- freedom to publish the results.

The Bulgarian Helsinki Committee shared its experience on how to assess if the conditions for effective monitoring visits are

8) For further details on the BHC, please refer to: www.bghelsinki.org/index_en.html

9) The UN Declaration on Human Rights Defenders of 1998, article 6.

10) Concluding observations and recommendations of the Committee against Torture concerning Cameroon (2003), Latvia (2003) and Serbia (2003).

present in different scenarios. The best case is if NGO visits are envisaged in the Constitution or law because this allows for a sustainable and long-term involvement. However, it is often not possible to enshrine the right in the legislation itself. A good alternative is if NGOs can sign an agreement with the authorities thereby safeguarding their right to conduct regular visits and freedom to choose the place, time and method of the visits. If NGOs are only allowed visits under restricted conditions, such as one-off visits, this can lead to difficult ethical choices for the NGOs. If conditions of access are not given, such as for one-off visits, NGOs sometimes need to refrain from conducting visits, in order not to put any detained person at risk.

In the event that access to places of detention are denied by the authorities, a way forward may be to convince the authorities that visits have been conducted peacefully so far, and that continued access should be allowed, underlining that human rights will not compromise security.

4.2. Recommendations of the working groups

How can NGOs obtain access to places of detention?

- Ensure a right by law to access and monitor all places of detention.
- The NGOs conducting visits should be eligible, notably possess the necessary professional expertise and be transparent.
- Use the media or the prosecutor to gain access to detentions.
- Get in touch with the family of the prisoners.
- Coordinate with the authorities to organize visits.
- Establish a coalition, which can conduct joint visits.
- Form joint committees of representatives from authorities and civil society.

- Encourage charitable organizations to participate in prison visits.
- International organizations should encourage States to ratify OPCAT.
- Increase awareness about OPCAT.

Experiences and strategies of NHRI in gaining access:

- Increase the frequency of monitoring visits.
- Increase experience and exchange of information with NGOs.
- NHRI's training department should provide training on monitoring.

Accessing places of detention as lawyers for the purpose of monitoring:

- The lawyers' role should be activated at the detention centre.
- The detainee should not be interrogated without a lawyer.
- The detainee should have access to his file at the police.
- The recommendations of the seminar should be sent to States.

Accessing places of detention as members of parliament:

- Need to form specific Human Rights Commissions in Parliament, which will have a mandate to visit places of detention and deal with complaints from prisoners. The Commission should seek change, e.g. ensuring that alleged perpetrators are held accountable. The Commission should submit report on detention visits to the Parliament and participate in local, national and international activities in order to increase their experience.
- The MPs should promote adoption of legislation to ensure the above.
- The Arab Inter-Parliamentary Union should promote the setting up of human

rights commissions in all member States and strengthen their role in monitoring human rights of detained persons.

- In Kuwait, Parliamentarians can visit any prisoner at any time after agreement with the Ministry of Interior.

5. Conducting detention monitoring visits

5.1. Detention monitoring

at the international level

The UN Special Rapporteur on Torture,¹¹ Manfred Nowak, initiated his presentation by referring to the report "In Larger Freedom" of the former UN Secretary General Kofi Annan. The report addresses the relation between security, development and human rights stating that: there is no security without development, no development without security and both depend on human rights.

The UN Special Rapporteur on Torture outlined his mandate to conduct country visits. As the Special Rapporteur can only visit States to which he has been invited, he sometimes asks various States if he may come, e.g. Jordan, Yemen and Iraq. Requests are made to those States where the visit can have an impact, e.g. after a change of government, where there is political will to combat torture.

States grant the guarantees and facilities for his visits as specified in the Terms of Reference of the Special Procedures. States agree to this Terms of Reference when inviting the Rapporteur to visit their country. These include freedom of movement for the Rapporteur and his team, access to all

¹¹) For further details please see www2.ohchr.org/english/issues/torture/rapporteur/index.htm

prisoners at any time and the ability to conduct interviews with any detainee in private, and the content of the interview remaining confidential. Interviews must not take place in the presence of prison guards or prison staff. If prison authorities do not allow for private interviews, the Rapporteurs refuse to conduct the visit. The Rapporteur specifies that it is a condition to have freedom of inquiry in places of detention. Freedom of access must be granted to the visiting team throughout the entire detention facility. The Rapporteur stressed the importance of the right to use all forms of media, including digital recordings and photography, as a recording mechanism. The Rapporteur emphasized that unannounced visits conducted without prior notice in the form of surprise visits, are essential to combat torture.

The visiting team must be composed of three to four highly specialized experts, including human rights experts, country expertise, interpreters, forensic experts and security staff. It is also important to have gender balance within the visiting team.

When conducting visits the Rapporteur needs to address the following issues: striking a balance between courtesy and effectiveness, reviewing prison records, visiting disciplinary cells and reviewing disciplinary records, selecting detainees for interviews and ensuring protection of victims and witnesses.

With respect to private interviews with detainees, the Rapporteur needs to be aware of the risks involved for the detainee and the interviewer. Detainees are always informed about the purpose of the visit and the risks involved in doing an interview, and it is only conducted if the prisoner gives his informed consent.

5.2. Detention monitoring by the International Committee of the Red Cross (ICRC)

The representative of the International

Committee of the Red Cross (ICRC)¹² described the framework, which the ICRC follows when it conducts visits to places of detention.

The objectives of the visits of detainees are as follows:

1. To prevent enforced disappearances and extrajudicial executions.
2. To prevent ill treatment.
3. To improve the conditions of detention.
4. To ensure respect for judicial guarantees.
5. To restore contact with family members.

In addressing cases of abuse, the ICRC takes a responsive action. Where a person has allegedly been ill-treated, the ICRC will inform the authorities and urge them to investigate these allegations and on that basis to punish the persons responsible in order to bring all forms of ill treatment to an end and to guarantee that no such incidents re-occur.

5.3. The ICRC methodology: talk with the director, visiting premises, and talk with detainees¹³

Since 1915 the ICRC has progressively developed procedures for visiting and subsequently monitoring the conditions in which people deprived of their liberty are detained. Recent international and national visiting

12) For further details on the ICRC, please refer to: www.icrc.org/

13) For further details on the ICRC's monitoring of places of detention please refer to Protection of detainees: ICRC action behind bars by Alain Aeschlimann, the International Review of the Red Cross No 857 (31-03-2005), available at: www.icrc.org/web/eng/siteeng0.nsf/html/review-857-p83; and Visits to prisoners and documentation of torture by Hernán Reyes, 31-03-2002; available at: www.icrc.org/web/eng/siteeng0.nsf/htmlall/5arfsr?opendocument

mechanisms have greatly drawn on this methodology when establishing their own procedures. In 2006, the ICRC conducted more than 6,000 visits to over 2,577 detention places worldwide.¹⁴

During its visits, the ICRC assesses the treatment and material conditions of detention, such as accommodation, medical care, hygiene, food. The ICRC also looks into the psychological conditions of detention and checks on aspects such as access to fresh air, family visits, etc. The health of the detainees and the respect for judicial guarantees are also areas of interest to ICRC delegates.

The modalities of ICRC visits are as follows:

- Access all detainees in their place of detention.
- Possibility to register their identity.
- Access to all premises and facilities.
- Interview the detainees freely and without witnesses.
- Repeat the visits to the detainees.

The experience of almost a century of visiting has shown that visits are not effective or can even be harmful, if these modalities are not respected. The ICRC does not visit places of detention unless these minimum modalities are guaranteed.

An ICRC visit consists of the following four steps:

1. Initial talk with the prison administration: The objective of the initial talk is to foster dialogue, gather information on the prison population, gather information on general detention issues, and to follow-up on previous visits.

2. Tour of the premises:

As a second step, the ICRC conducts a tour of the premises to get familiar with the place, its infrastructure and to see all persons detained.

3. Talks with the detainees:

The talk with the detainees is the cornerstone of any ICRC visit. The objective is to listen to the concerns of the detainees during interviews without witnesses, register their identity if needed and follow-up on individual cases.

4. Final talk with the prison administration:

During a final talk with the director, the delegates report the first findings and make recommendations for changes.

In its detention activities, the ICRC always uses its confidential approach. It does not report publicly on its findings. It relies on establishing trust with the authorities and the detainees. It only shares its findings with the responsible authorities in a bilateral way.

However, the ICRC's confidentiality is not unconditional. It is linked to a commitment made by the authorities to take account of the ICRC's recommendations aiming at putting an end and prevent any further recurrence of the violations it notes.

In the event that its representations do not have the desired impact, the ICRC reserves the right to have recourse to other modes of action. They will only be used if ICRC is unable to improve the situation in humanitarian terms and bring about greater respect for the law through bilateral confidential representations.

Modes of action

After the visit, the delegates analyse the information gathered by the different members of the team and decide on mode of action to be undertaken, which can be categorized as follows:

¹⁴) The legal basis for ICRC visits can be found in article 126 of GC III and article 146 of GC IV.

- *Persuasion*: written and verbal representations to the concerned authorities recommending changes in behaviour or legislative changes.
- *Substitution*: rehabilitation of premises, rehabilitation of water and sanitation system, food supply, non food supply, health. Ensure contacts with family, ensure respect of procedural safeguards.
- *Support to the authorities*: training on prison standards, technical assistance for construction and rehabilitation, reform of health management, develop training curricula, facilitate contacts with other better functioning systems, promote legislative changes, train medical personnel etc.
- *Mobilisation*: The ICRC may also share its concerns with third parties if convinced that they may exercise a positive humanitarian influence, particularly when they are close to the authorities concerned and play a key role in improving the situation.
- *Denunciation*: The ICRC only uses denunciation as a last resort, if all other means do not bear sufficient results. It is exceptional and only issued if the following conditions are met:
 - Violations are major and repeated or likely to be repeated.
 - Delegates have witnessed the violation with their own eyes, or the existence and the extent of these violations have been established on the on the basis of reliable and verifiable sources.
 - ilateral confidential representations and humanitarian mobilization efforts have failed to put an end to the violations.
 - It is in the interest of the persons affected.

5.4. Recommendations of the working groups

Detention monitoring methodology:

key elements:

- Establish a legal basis for the monitoring of the places of detention including access to the places of detention.
- Permission to meet and conduct interviews with several inmates.
- Ensure free communication between prisoners and the monitoring team.
- Establish a possibility of providing legal aid to victims of reprisals.
- Communication with the highest authorities in case of reprisals.
- Selection procedure to select the optimal prisoners for interviews.
- The detainee should have a right by law to see a physician and be examined for possible traces of torture or other ill-treatment.
- Ensure that the judicial authority is independent.

Monitoring the detention of vulnerable groups:

- Develop strategy within the prison system for vulnerable groups.
- National legislation should be reviewed and amended so as to ensure that it fulfils the needs of vulnerable groups.
- The vulnerable groups should have separate accommodation within the places of detention.
- Training of law enforcement officials in order to generate an increased understanding of the needs of vulnerable groups.
- Increase control with the prisons.
- Provide social and medical services to the vulnerable groups.
- Those responsible for maltreatment of vulnerable groups should be held accountable.
- The prison system should expand its field

of expertise so as to be able to deal appropriately with vulnerable groups.

- Review the Penal Code so as to ensure that special consideration is given to minors.
- Special care should be awarded to persons with particular diseases.
- Conditional release of vulnerable groups.
- Put pressure on States to adhere to international conventions prescribing particular protective measures vis-à-vis vulnerable groups.

Monitoring places of detention in times of crisis:

- Ensure that national control mechanisms are established in order to guarantee respect for international human rights.
- State institutions should report on human rights compliance.
- The international community should put pressure on individual States to guarantee respect for the Geneva Conventions I-IV (1949).
- Apply international human rights instruments, including the UN Special Rapporteurs.
- Individual complaints should be submitted to the UN Special Rapporteur on Torture through all possible channels.
- Denounce human rights violations, amongst others by submitting appeals and putting pressure on States not to violate international human rights.
- Increase the capacity of human rights institutions to gather and document information about human rights violations.
- Make use of the political or legislative space to give human rights institutions greater powers to monitor human rights.
- Identify uncontroversial cases of human rights violations within the place of de-

tection and hereby promote an improvement in the treatment of persons who are deprived of their liberty.

- Human rights organizations that discover human rights violations should promptly report on these violations.
- Stress the necessity of bringing about effective monitoring instruments with civil society participation to contribute to upholding human rights.
- Conclude agreements with State and non-governmental monitoring bodies in order to promote respect for human rights.
- Guarantee redress, compensation and rehabilitation to victims of torture.
- Guarantee legal representation to all detainees at all stages of the criminal investigation within the police and prosecution.

Protecting detainees during and after visits against reprisals:

- Activate the role of the prosecutor: prosecute reprisals against detainees.
- Detention centres should be obliged only to admit a detainee if a full medical examination has been conducted.
- Urge States to sign and ratify the UNCAT and the OPCAT.
- Ensure that detainees are given the possibility of rehabilitation so as to facilitate their re-integration into society upon release.
- Establish independent bodies mandated to monitor detention centres.
- Ensure legislation on the protection of detainees.
- Facilitate communication between the detainees and the monitor.

Follow-up is critical in case of reprisals. Reprisals are a risk and it is very important to have mechanisms in place to prevent re-

prisals. The Bulgarian Helsinki Committee suggested that the visiting teams formulate agreements with the Ministry of Justice before conducting a visit, to ensure that detainees are not punished for talking to monitoring bodies.

Protecting detainees during and after visits against reprisals (continued):

Other measures to prevent reprisals include:

- Interview as many detainees as possible from different cells, so that prison authorities cannot establish what information was given by whom.
- Provide contact information of the visiting team or the interviewer and a lawyer, hereby ensuring free correspondence and facilitating prosecution.
- Provide legal aid to the prisoners who have suffered reprisals, if need be.
- Select the prisoners for interviews yourself, and choose those that are less likely to be attacked; Start with common, collective conversations in the cell. Don't choose the dominating detainee (be aware of those that might collaborate with the authorities), but the most quiet person.
- Document human rights violations and conditions by taking photos if allowed to do so.

It is crucial that follow-up visits be conducted by an NGO or a visiting body that is separate to the original visiting team, to ensure a comprehensive assessment is conducted, and to minimise the risk of reprisal from taking place.

Participants agreed with the above recommendations and added that compensatory measures need to be introduced to recompense torture victims for any ill treatment and corporal punishment they may have received.

5.5. *Abusing the concept of detention monitoring: monitoring in the context of renditions*

By way of introduction the UN Special Rapporteur on Torture, Manfred Nowak, pointed out that diplomatic assurances have a long history in extradition cases concerning death penalty and fair trial. The phenomenon of diplomatic assurances against torture is more recent.¹⁵

The European Court of Human Rights and the United Nations Committee against Torture have ruled on the non-admissibility of diplomatic assurances against torture, notably in the case of *Chahal v. the United Kingdom*¹⁶ and the case of *Agiza v. Sweden*.¹⁷

However, in the context of the “war on terror” diplomatic assurances against torture continue to be used by some States, e.g. the United Kingdom has concluded Memorandums of Understanding (MOUs) with Jordan, Lebanon and Libya (withdrawn).

Enforced disappearances:

- Prolonged incommunicado detention in an unknown location constitutes an enforced disappearance.
- Enforced disappearance is a multiple human rights violation that includes the right not to be subjected to cruel, inhuman or degrading treatment.

15) at: <http://daccessdds.un.org/doc/UN-DOC/GEN/N05/476/51/PDF/N0547651.pdf?OpenElement>

16) For further details please refer to <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=8335839&skin=hudoc-en&action=request>

17) For further details, please refer to CAT, Communication no. 233/2003, Sweden 24/05/2005. CAT/C/34/233/2003, available at: [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.34.D.233.2003.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CAT.C.34.D.233.2003.En?Opendocument)

- Prolonged enforced disappearance amounts to torture, cf. the Human Rights Committee decision in *El-Megreisi v. Libya* (three years of ED).
- The prohibition of *refoulement* – which is a part of the absolute prohibition of torture – is applicable to serious risk of enforced disappearance.

Monitoring Memorandums of Understanding (MOUs):

- The MOUs often have a clause on monitoring by an independent NGO. However, even if it may be an excellent NGO there is the question of funds and a lot of pressure on the NGO. The question is how you can have a watertight monitoring.
- Amnesty International, Human Rights Watch and the International Committee of the Red Cross have all refused to monitor MOUs.

The Special Rapporteur on Torture stressed that the principle of non-refoulement is absolute; it forms part of the prohibition of torture, cf. Article 3 of the UNCAT.

The Special Rapporteur confirmed that he had intervened in many cases where individuals were at risk of being sent to countries where they would risk being tortured. The Special Rapporteur harshly criticized States for concluding Memoranda of Understanding guaranteeing that a particular individual will not be tortured. The Special Rapporteur also stressed that in such individual cases the visits conducted by NGOs to a person who has been sent back under a Memorandum of Understanding will not effectively protect this person against torture. *The UN Special Rapporteur therefore called upon NGOs to refuse becoming instrumentalized in the framework of such agreements.*

6. Bringing about change

6.1. Experiences and strategies for obtaining improvements in places of detention

The Director of the Bulgarian Helsinki Committee gave an outline of how to achieve improvement in places of detention by way of independent visits. By way of introduction it was stressed that a monitoring visit is not an end in itself, but only the beginning of a process aimed at improving the treatment and conditions of detention.

The key features to study during an assessment of the treatment and condition of detention include: physical abuse and disciplinary sanctions; material conditions; respect for other human rights (e.g. correspondence, religion, expression, etc), administration of the detention facility; frequency and effectiveness of official inspections; and access to detention facility by NGOs.

In order to obtain a sustainable improvement in the places of detention it was recommended to take several steps. A first step is to establish and maintain a constructive dialogue with the authorities. This can be achieved by way of:

- Regular meetings at different levels of administration.
- Maintaining regular correspondence.
- Joint participation in public and official events.
- Collaboration for improvement of the legal framework in working groups, through comments on draft legislation etc.
- Follow-up on concerns.

A second step is to draft professional monitoring reports. As part of this process one should consider the desirable degree of consultation with the detaining authorities and the distribution policy (confidential v. public, etc.), engaging with the media for

advocacy purposes and building coalitions with other civil society actors, such as human rights NGOs, NPMs, religious groups, professional associations and associations of prisoners.

The Bulgarian Helsinki Committee underlined the importance of using international channels for advocacy, such as submitting shadow reports to the UN treaty bodies and participating in the Universal Periodic Reviews of the States.

Finally, in case the constructive dialogue fails, one may consider the possibility of taking up legal action. However, the decision of taking up legal action must be weighted carefully, as litigation can rarely be reconciled with an approach based on constructive dialogue. Moreover, court cases can absorb a lot of capacity.

6.2. Using the UN human rights mechanisms to bring about change

A representative of the Office of the United Nations High Commissioner for Human Rights (OHCHR)¹⁸ provided an overview over the UN human rights machinery. She encouraged the participants to use these mechanisms in order to ensure improvements of human rights in places of detention in line with international human rights standards and States parties' obligations.

The UN human rights system consists of conventional mechanisms (treaty-based bodies) and extra-conventional mechanisms (charter-based bodies):¹⁹

a) Conventional mechanisms (UN treaty-based bodies)

Treaty-based bodies are set-up as a result of legally binding human rights treaties. There are seven treaty-based monitoring bodies that monitor the implementation of the core international human rights treaties. These include the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee against Torture, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child and the Committee on Migrant Workers.

The main function of the committees is to make recommendations to the States parties following a constructive dialogue based on reports submitted to them. In this process, the committees welcome and take into account information (alternative reports) submitted by NGOs and National Human Rights Institutions. The committees also issue so-called "general comments" on thematic issues, which are the committees' interpretation of the content of human rights provisions stipulated in the respective treaties.²⁰

The process of reporting is a useful tool to bring about legislative, policy and programmatic change. It is a key opportunity for public scrutiny of government policies and involvement of civil society in policy review, evaluation and formulation. Concluding observations may help set priorities and provide framework for joint action by government, agencies and civil society.

18) More detailed information on the Office of the High Commissioner for Human Rights (OHCHR) is available at: www.ohchr.org/EN/Pages/WelcomePage.aspx

19) More detailed information on the charter-based bodies and the treaty-based bodies is avail-

able at: www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx

20) The general comments of the Committee against Torture are available at: www2.ohchr.org/english/bodies/cat/comments.htm

Independent national organisations that conduct regular monitoring in places of detention can use the reporting process before the committees, among other purposes, for giving more weight and visibility to their findings and recommendations. If they do not have access to places of detention, they can inform the committees accordingly and encourage them to recommend that access be provided. The committees directly concerned with questions of human rights in places of detention are the Committee against Torture and the Human Rights Committee. Other committees may also treat specific questions related to the specific rights of groups of persons, for instance children or women.

b) Extra-conventional mechanisms
(UN Charter-based bodies)

The extra-conventional mechanisms are based on the Charter of the United Nations (1945) and established as a result of resolutions and decisions of the UN System. These bodies include the Human Rights Council (before the Commission on Human Rights),²¹ the Universal Periodic Review²² and the so-called Special Procedures, which include 30 thematic mandates²³ and 9 country mandates.²⁴ Examples of thematic mandates are: The UN Special Rapporteur on Torture²⁵ and the UN Working Group on

Arbitrary Detention. Examples of country mandates are: The UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.²⁶

The speaker's evaluation of the success of the various UN mechanisms was mixed. The process is sometimes lengthy and progress rather slow, but numerous laws have been reformed and new national bills of rights drafted, taking inspiration from the treaties. Treaties and the jurisprudence of the committees are also increasingly being cited in court cases. Therefore, the speaker encouraged national actors to use both types of UN mechanism in the following way:

- Prepare alternative reports (shadow reports) – coordinated consolidated reports; attend committee sessions; brief Committee members.
- Provide concise and up-to-date country information to all mechanisms (Treaty Bodies, Special Rapporteurs, Human Rights Council).
- Follow-up to concluding observations of the Committee & recommendations of Special Rapporteurs at the national level.
- Attendance at Committee sessions.
- Interaction with Committee members, with Special Rapporteurs during country visits and at the Human Rights Council sessions.

21) The homepage of the Human Rights Council: www2.ohchr.org/english/bodies/hrcouncil/

22) www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx

23) A complete list of the thematic mandates is available at: www2.ohchr.org/english/bodies/chr/special/themes.htm

24) A complete list of the country mandates is available at: www2.ohchr.org/english/bodies/chr/special/countries.htm

25) More detailed information on the UN Special Rapporteur on Torture is available at: www2.ohchr.org/english/issues/torture/rapporteur/index.htm

26) More detailed information on the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 is available at: www.ohchr.org/EN/countries/MENARegion/Pages/PSIndex.aspx

6.3. Recommendations of the working groups

Experiences with constructive dialogues with authorities

- Advocacy on human rights.
- Constructive dialogue with the government, prison and security authorities.
- Networking with national and international NGOs, NHRI, Bar Associations.
- New philosophy of capacity building of prison staff.
- Use of media.
- Participation in International Detention Coalition.
- Translate material on human rights into Arabic for the prison authorities.
- Submit report on prison conditions to the prison authorities.
- Send experts to the prisons.
- Prioritise maintaining relations with the prison.
- Put criticism indirectly.
- Organise periodic meetings between the NHRI and the NGOs.
- Understand the structure of the Executive authorities and their objectives.
- Publish positive actions of the prison authorities in the media.

Writing reports documenting human rights violations

- Strengthen advocacy towards authorities to promote a human rights approach to governing places of detention.
- Promote networking between NGOs, associations and NHRIs.
- Develop personal and institutional contacts with authorities in order to promote constructive dialogue.
- Encourage involvement of the media to report on both positive and negative aspects.
- Organise periodic meetings between authorities, NHRIs and NGOs.

- NHRIs and NGOs should have a better understanding of the structure of the Executive authority.
- Dialogue between authorities should promote a respectful dialogue.
- Develop new philosophies or alternatives to detention restorative justice and human rights approach to prison management.

When dialogue fails: different strategies for pressuring for change

- Issue statements to the authorities and have a dialogue with the responsible authorities.
- Issue national and international press statements and hold conferences in order to influence public opinion.
- Train security forces on international human rights and the psychological consequences of torture.
- Draft monthly and annual reports and recommendations to the authorities.
- Strengthen the capacity of national parliaments to play a greater role in the struggle against torture.
- Use national and international occasions to combat torture, e.g. The UN Day in Support of Victims of Torture on 26 June.
- Put pressure on authorities in order to facilitate change.
- Introduce a culture of human rights in training material.

Encouraging legal and institutional reform

- Raise awareness of parliamentarians and put pressure on them to amend the prison laws in order to allow institutions to monitor and document the conditions in the prisons.
- Develop training instruments for prison staff in order to increase their awareness about human rights and particularly detainees' rights.

- Develop legislation to create instruments of effective monitoring of prisons.
- Issue a decision or law which provides indemnities to the inmate.
- The States parties to the UN Convention against Torture (UNCAT) should amend their national legislation so as to bring in conformity with UNCAT.
- Publish guidelines on health and medical care in all prisons and strictly control the respect for these guidelines.
- Establish a judicial commission to control the situation in prisons and to investigate abuse and unlawful situations.

7. Joint monitoring visit to Mwaghar Correction and Rehabilitation Centre

7.1. *Background information on the Mwaghar CR*
The National Centre for Human Rights (NCHR) was able to negotiate a visit for all conference participants to Mwaghar Correctional and Rehabilitation Centre (CRC) as a training exercise.²⁷ The Jordanian authorities allowed the participants to inquire about aspects of prison life, including medical care, food and recreation. However, they did not grant any permission for the participants to conduct private and confidential interviews with individual detainees.

After an animated debate, participants agreed that such modalities would not allow for a real monitoring visit, but that they would nevertheless offer a learning environment in the sense of a training visit.

7.2. *Lessons learnt about the visit*

In a debriefing session following the visit,

participants and experts extracted the following lessons about the methodology of monitoring human rights in places of deprivation of liberty:²⁸

Preparing the visit

- The visiting team should have knowledge of relevant legislation and regulations in advance of the visit, e.g. legal guarantees, prisoners' rights.
- Before entering the prison one must have agreed upon the powers and guarantees for the visiting body.
- The visiting team must always have a team leader so as to facilitate communication with the authorities and within the team.

Conducting the visit

– meeting the prison director

- The prison visits should in principle start with a meeting with the prison director who can provide crucial information (facts, numbers, etc.). The prison director can provide statistics (on the spot or later).
- The visiting team should be clear about the objectives of the visit and communicate them clearly to the prison authorities and detainees. Hereby you avoid creating false expectations, especially vis-à-vis the detainees.

Conducting the visit

– meeting and interviewing the prisoners

- In most prisons there is a strong hierarchy among the prisoners where the strong inmates control the less strong.

27) Mwaghar correction and rehabilitation center is a pre-sentencing detention facility and houses detainees charged with a crime but not yet convicted or sentenced.

28) A more comprehensive set of recommenda-

tions concerning the methodology of visiting places of detention can be found in *Monitoring places of detention: a practical guide*, APT 2004, available, among other languages, in English and Arabic on www.apr.ch. This was distributed to the participants during the seminar.

- You have to expect that some detainees will report back about your visit to the authorities.
- In order to collect information about the treatment in the early and most sensitive stage of arrest at the police station, it is a priority to speak to those newly arriving from the police station.
- You must always live up to the promises made to the detainees. If you cannot fulfil a promise, you must inform the detainee on the spot.
- Foreign inmates are often a good source of information, in particular for international visitors. However, they are often particularly vulnerable.

Conducting the visit

– meeting the medical doctor

- Let the visiting team's medical doctor speak to the prison doctor in order to ensure a professional dialogue.
- The prison doctor is a good source of information (homosexuality, drugs, HIV/AIDS, etc.) The prison doctor can talk about torture or other cruel, inhuman or degrading treatment (CIDT) if he wishes to.
- Relevant questions for the prison doctor would be:
 - What do you do if you discover torture or CIDT?
 - How many torture and CIDT cases did you discover in the last 12 months?
- However, it is very important to cross-check the information you receive from the prison director through interviews with prisoners, so reserve enough time for these interviews. You may decide to interview the prisoners first and cross-check the information they give you with the prison director afterwards.

8. Prevention of Torture and the OPCAT

8.1. Prevention of torture and other cruel, inhuman or degrading treatment or punishment in places of detention

Amnesty International gave a presentation on the issue of prevention from the perspective of the organization's 12-Point programme on prevention of torture.²⁹

1. Condemn torture and other ill-treatment
The highest authorities of every country should demonstrate their total opposition to torture and other ill-treatment by condemning these practices unreservedly whenever they occur. They should make clear to all members of the police, military and other security forces that torture and ill-treatment will never be tolerated.

2. Ensure access to prisoners
The practice of incommunicado detention should be ended. Governments should ensure that all prisoners are brought before an independent judicial authority without delay after being taken into custody. Prisoners should have access to relatives, lawyers and doctors without delay and regularly thereafter.

3. No secret detention
Governments should ensure that prisoners are held only in officially recognized places of detention and that accurate information about their arrest and whereabouts is made available immediately to relatives, lawyers, the courts, and others with a legitimate interest, such as the International Committee of the Red Cross.

²⁹) Amnesty International's 12-point program for the prevention of torture is available at: www.amnesty.org/en/library/info/ACT40/001/2005

4. Provide safeguards during detention and interrogation

All prisoners should be immediately informed of their rights. These include the right to lodge complaints about their treatment and to have a judge rule without delay on the lawfulness of their detention. Judges should investigate any evidence of torture or other ill-treatment and order release if the detention is unlawful. A lawyer should be present during interrogations. There should be regular, independent and unannounced inspection visits to all places of detention.

5. Prohibit torture and other ill-treatment in law
Governments should adopt laws for the prohibition and prevention of torture and other ill-treatment incorporating the main elements of the UN Convention against Torture. All judicial and administrative corporal punishments should be abolished.

6. Investigate

All complaints and reports of torture or other ill-treatment should be promptly, impartially and effectively investigated by a body independent of the alleged perpetrators. Officials suspected of committing torture or other ill-treatment should be suspended from active duty during the investigation.

7. Prosecute

Those responsible for torture or other ill-treatment should be brought to justice, wherever the suspects happen to be, whatever their nationality or position, regardless of where the crime was committed and the nationality of the victims, and no matter how much time has elapsed since the commission of the crime.

8. No use of statements extracted under torture or other ill-treatment

Governments should ensure that statements

and other evidence obtained through torture or other ill-treatment may not be invoked in any proceedings, except against a person accused of torture or other ill-treatment.

9. Provide effective training

It should be made clear during the training of all officials involved in the custody, interrogation or medical care of prisoners that torture and other ill-treatment are criminal acts. Officials should be instructed that they have the right and duty to refuse to obey any order to torture or carry out other ill-treatment.

10. Provide reparation

Victims of torture or other ill-treatment and their dependants should be entitled to obtain prompt reparation from the State including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.

11. Ratify international treaties

All governments should ratify without reservations international treaties containing safeguards against torture and other ill-treatment, including the International Covenant on Civil and Political Rights and its first Optional Protocol; and the UN Convention against Torture and its Optional Protocol.

12. Exercise international responsibility

Governments should use all available channels to intercede with the governments of countries where torture or other ill-treatment are reported. They should ensure that transfers of training and equipment for military, security or police use do not facilitate torture or other ill-treatment.

8.2. *The Optional Protocol to the UN Convention against Torture (OPCAT)*

The Rehabilitation and Research Centre for Torture Victims (RCT)³⁰ gave a presentation

on the Optional Protocol to the Convention against Torture (OPCAT).

The new international treaty was adopted at the UN General Assembly in 2002 in order to strengthen the protection of persons deprived of their liberty.³¹ The purpose of the OPCAT is to prevent torture and other forms of ill-treatment by establishing a global system of independent visits by international and national bodies to places where persons are deprived of their liberty. This new system is greatly inspired by the European model of the Committee for the Prevention of Torture (CPT) under the Council of Europe and by the detention monitoring undertaken by the International Committee of the Red Cross (ICRC).

The OPCAT entered into force on 22 June 2006. The status of ratification as of 1 September 2007 is 34 ratifications and 58 signatories.³²

The OPCAT is based on the premise that the more open and transparent places of detention are, the less abuse will take place. The OPCAT therefore aims at opening the doors to the world's prisons and police stations to external scrutiny.

The new international treaty is groundbreaking, because whereas some of the existing mechanisms act after torture has occurred, the new system will intervene beforehand to prevent torture. Furthermore, while several of the existing mechanisms publicly condemn States in a climate of

confrontation, the new system will assist States through a confidential process of open dialogue and cooperation. The focus of the OPCAT is thus *preventive*, and it hereby supplements the re-active approaches to the eradication of torture, such as the prosecution of perpetrators and the attainment of redress for torture victims.

The OPCAT promotes collaboration with States to prevent violations. The assistance to States offered through the OPCAT is a confidential process of open dialogue and cooperation over a long period of time.

The OPCAT sets up a two pillar approach for the prevention of torture consisting of an *international* mechanism established under the UN: The UN Subcommittee on the Prevention of Torture (SPT)³³ and *national* mechanisms in each member State: the National Preventive Mechanism (NPM) set-up by States Parties.

The SPT consists of 10 experts nominated and chosen by States Parties. The SPT should consist of professionals with experience in fields relevant to the treatment of persons deprived of their liberty.

The mandate of the SPT is to carry out regular visits to any place of detention, where people may be deprived of their liberty, such as police stations, prisons, military barracks, refugee camps, psychiatric hospitals, etc.³⁴

During a visit the SPT must be guaranteed unrestricted access to all information

30) For further details, please refer to: www.rct.dk/

31) UN General Assembly, A/RES/57/199, 18 December 2002.

32) An up-to-date status of ratification of the OPCAT is available at: www2.ohchr.org/english/bodies/ratification/9_b.htm

33) Further details on the UN Subcommittee for

the Prevention of Torture (SPT) is available at: www2.ohchr.org/english/bodies/cat/opcat/index.htm

34) Places to be visited may include police stations, security force stations, all pre-trial centres, remand prisons, prisons for sentenced persons, centres for juveniles, immigration centres, transit zones at international ports, centres for detained asylum seekers, psychiatric institutions, places of administrative detention.

concerning the number of persons deprived of their liberty; all information referring to the treatment and conditions for detention and all places, installations and facilities. The SPT should have the opportunity to conduct private interviews with persons of its choice and the liberty to choose the places it wants to visit.

After a visit the SPT must make recommendations and observations to the States Parties and the States Parties have an obligation "to examine the recommendations of the SPT and enter into dialogue with it on possible implementation measures."

The NPMs must be established one year after entry into force of OPCAT or one year after ratification by the State Party. The OPCAT does not prescribe a particular form that the NPM must take and States Parties may choose the form that is most appropriate for their country context.

The mandate of the NPM is similar to that of the SPT and they must visit the same places as the SPT. The NPM is free to determine the frequency of visits, but regularity of visits is important to monitor improvements or deterioration in conditions of detention and to help foster a constructive dialogue between NPMs and national authorities.

The NPMs must be guaranteed an independent basis, independent personnel appointed through an independent procedure and financial independency.

The composition of the NPM should be multidisciplinary.³⁵

After a visit the NPMs must make recommendations to appropriate authorities

outlining means to undertake improvements. The States Parties are obligated to consider recommendations and enter into a dialogue on possible implementation. States Parties must also publish an annual report on the work of the NPMs.

8.3. The UN Subcommittee on Prevention of Torture (SPT)

Dr. Hans Draminsky Petersen, Vice-President of the UN Subcommittee on Prevention of Torture (SPT)³⁶ gave a presentation on the mandate, methodology and challenges of the SPT with a focus on the medical aspects of prevention.

With the overall objective of strengthening the protection against torture, the SPT is mandated to carry out regular visits to all places of detention under the jurisdiction of the States Parties. The way forward is to assess three aspects:

- First, that *legislation* is in accordance with international conventions;
- Second, that *rules and procedures* are in accordance with legislation, and
- Third, that *practices* are in accordance with legislation and rules

When assessing the justice system of a particular country, the SPT focuses on three levels:

- *Structure*: International conventions, national legislation.
- *Process*: Function of institutions, regulations and practices.

35) The NPM could include: Lawyers, doctors, forensic specialists, psychologists and representatives from NGOs as well as specialists on human rights law, humanitarian law, penitentiary systems and the police.

36) More information on the UN Subcommittee on Prevention of Torture (SPT) is available at: www2.ohchr.org/english/bodies/cat/opcat/index.htm

- *Outcome:* Detainees treated with respect for their rights and integrity (ill-treatment/torture? Non-systematic/systematic?).

As outlined in the previous presentation, the Optional Protocol to the UN Convention against Torture (OPCAT) is composed of two pillars: The National Preventive Mechanisms (NPM) and the UN Subcommittee on Prevention (SPT). One of the main challenges is to establish and maintain cooperation between these two sets of institutions and to create measures to fill the gap in control for system defaults between the visits of the NPMs and the SPT. Although the NPMs and the SPT contribute considerably to the prevention of torture, Dr. Draminsky pointed to the fact that a third pillar is needed in order to ensure protection against torture between the visits of the NPM and the SPT. Such third pillar institutions could be existing domestic visiting mechanisms, such as ombudsman institutions, National Human Rights Institutions, NGOs, etc. In addition, different staff within the place of detention have a crucial role to play in the prevention of torture as a result of their continuous presence in the place of detention.

Turning to the medical aspects of torture prevention, Dr. Draminsky referred to the international principle that “A proper medical examination shall be offered to a detainee or imprisoned person as promptly as possible after his admission to the place of detention”, which is considered a cornerstone in the prevention of torture.³⁷

The aim of the above-mentioned *preventive examination* is:

- To assess the health and needs of treatment.
- To assess exposure to violence when the inmate arrives to avoid that staff of the institution is made responsible for violence committed by others.
- To offer a possibility for the detainee to have a professional assessment of a history of ill-treatment prior to detention.
- A repeated examination when leaving the institution gives the detainee a similar possibility to have statements of ill-treatment assessed.

In addition to the independent preventive examination that is conducted by external bodies, such as NPMs and the SPT, medical doctors in the place of detention also have a potential for torture prevention. This is the case because the “prison doctors” or doctors of other places of detention are present every day on the location. Furthermore, they hold a key position in relation to the inmates and examine all inmates and, after some training with supervision, the “prison doctors” are qualified to make proper forensic examinations.

The *medical documentation* of torture consists of the following steps:

- a) Documentation of the history of ill-treatment and the symptoms.
- b) A thorough medical examination.
- c) A conclusion as to the likelihood of exposure to ill-treatment based on an analysis of the consistency of a) and b).

How to make routine medical examination preventive:

- The doctor detects a case of ill-treatment through routine examination and reports to his superior.
- The chief physician supervises the doctors and reports cases of ill-treatment to

37) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), principle 24.

ministries and to the director of the institution.

- The director supervises the police officers and/or other staff of the place of detention and initiates inquiries on cases of ill-treatment.
- The ministry receives and processes cases of alleged ill-treatment and supervises inquiries. In substantiated cases, inquiries are handed over to an independent body.
- The NPM supervises all actors, including the doctors of the institutions.
- The SPT supervises all actors and cooperates with the NPM.

In conclusion, it was stressed that due to the sporadic presence of the SPT and the NPMs in places of detention, it should be attempted to include already existing human resources in the prevention of torture, notably medical doctors working in detention centres. It was further pointed out that the preventive part of the medical work should be made visible and efficient by ministries through emphasis on clear objectives of the medical examination and a sufficient protocol for the medical examination.

8.4 *The national preventive mechanisms under the OPCAT*

The representative of the Association for the Prevention of Torture (APT) gave a presentation on the requirements and global trends regarding the National Preventive Mechanisms established under the OPCAT.

With regard to the process by which each country determines its NPM, it was underlined that while this process may differ from one country to the next, some elements should always be included. First, the process should be transparent and include the widest possible range of relevant actors, including government officials, civil society, national human rights institutions, existing visit-

ing bodies, parliamentarians, and in some cases regional and international inter-governmental and non-governmental organisations. Second, all participants in the process should have available to them an “inventory” (i.e. assessment) of relevant existing national visiting bodies, estimates of the approximate number, size, type and locations of places of detention in the country, the composition of the detainee population and the text of the OPCAT and its explanation.³⁸

There are several examples worldwide of States that have undertaken inclusive consultation processes. In countries such as Mexico, Uruguay, Paraguay, Armenia and Georgia, the national actors, including civil society actors, have led such consultation processes and hosted national seminars and public fora.³⁹

As States embark on implementation of the OPCAT, a first step is to decide on the NPM. The question arises whether the State should designate an existing mechanism, create a new mechanism or amend an existing mechanism to fit with the OPCAT. All three options have their advantages and disadvantages, and what is important to stress is that there is no universal or ideal NPM model.

Any decision about whether to designate a national human rights commission, Ombudsperson’s office or an NGO as the NPM

38) For further details, please refer to APT’s Guide on Establishment and Designation of National Preventive Mechanisms, 2006, which is available at: www.ap.t.ch/component?option=com_docman/task,doc_download/gid,102/Itemid,59/lang,en/

39) For further details, please refer to APT’s paper on Civil Society and National Preventive Mechanisms under the Optional Protocol to the Convention against Torture, June 2008, at: www.ap.t.ch/component?option=com_docman/task,doc_download/gid,320/Itemid,59/lang,en/

under the OPCAT should only be taken after a careful and realistic assessment of the advantages and the disadvantages of the particular institution.⁴⁰

Regardless of the type of NPM that is designated it must have a global coverage, both in terms of geography reaching out to the most remote areas, and in terms of type of institutions monitored. While the traditional focus of detention monitoring may be on institutions within the criminal justice system, such as police stations and prisons, the OPCAT requires that NPMs also monitor all places of deprivation of liberty, including immigration centres, military and intelligence facilities, psychiatric institutions as well as unofficial places of detention.

At this point in time, a total of 15 States have designated their NPMs.⁴¹ The global trend that is emerging is that most States designate either the Ombudsman institution or the National Human Rights Institute. However, some States have also chosen to establish entirely new mechanisms or so-called mixed mechanisms made up of a combination of Ombudsman Institutions and NGOs:

- *Ombudsman and national human rights institutions* with new powers and resources: Mexico, Denmark, Estonia, Czech Republic, Ghana, Mauritius, Montenegro

- Designation of a *variety of existing bodies*: UK, Uruguay, New Zealand
- *New special body*: Argentina, Paraguay, Germany, Switzerland, France
- Creation of a *new national human rights institution* with NPM function: Mali, Italy, Benin, Chile

Even an NPM that has, on paper, all of the powers and mandate needed for an NPM, and has access to all of the financial, staff, and logistic resources needed to undertake visits, will fail to qualify as an effective NPM under the OPCAT if it lacks credibility in the eyes of detainees and authorities, civil society and the general public.

NPMs are entitled to a range of privileges and immunities, which are needed to be effective in their work. Key examples include the right to keep the information it collects confidential, including that it be privileged from production to government officials, and immunity from arrest or detention for things done in connection with their NPM work, as well as immunity from prosecution or civil lawsuit for such acts.

9. Conclusion

With the overall objectives of exchanging knowledge and experiences about existing systems and practices of monitoring places of detention in the MENA region as well as identifying ways to strengthen the effectiveness of detention monitoring, the seminar focussed on three crucial steps in detention monitoring;

- 1) Gaining access to places of detention.
- 2) Conducting detention monitoring visits.
- 3) Bringing about change.

Human rights defenders and experts from across the Middle East and North Africa debated issues such as: How can NGOs and

40) For further details, please refer to APT's paper on National Human Rights Commissions and Ombudspersons' Offices / Ombudsmen as National Preventive Mechanisms under the Optional Protocol to the Convention against Torture, January 2008, available at: www.ap.t.ch/component?option=com_docman/task,doc_download/gid,291/Itemid,59/lang,en/

41) An up-to-date list of the States that have designated their NPM is available at: www.ap.t.ch/content/view/138/152/lang,en/

National Human Rights Institutions *obtain access to places of detention?* What are the experiences of accessing places of detention as lawyers or parliamentarians? The discussions were enriched by illustrative examples of how different organisations have succeeded in convincing prison authorities to open the doors to external scrutiny. Based on input from both national and international human rights monitors the seminar identified a set of recommendations on what steps to take in order to increase the likelihood of gaining access to places of detention.

The central issue of *conducting detention monitoring visits* was addressed both from an international perspective and a national perspective focussing on distinct thematic issues. The UN Special Rapporteur on Torture, the UN Subcommittee for Prevention of Torture (SPT) and the International Committee of the Red Cross (ICRC) shared their experience and gave recommendations on how to conduct preventive visits to prisons, police stations and other closed institutions. Focus was put on non-negotiable minimum requirements, methodology, team composition, inspection of cells, interviews with prisoners and many other issues. Based on concrete experiences from within the MENA region, the seminar discussed key elements of detention monitoring methodology, monitoring the detention of vulnerable groups, monitoring places of detention in times of crisis, such as in Iraq and Palestine, and protecting detainees against reprisals.

Finally, the seminar addressed the issue of how to bring about change, i.e. how to help improve the treatment and conditions of persons who are deprived of their liberty. As a final outcome, the seminar identified a series of recommendations about how to maintain a constructive dialogue with the authorities, how to write reports document-

ing human rights violations, how to pressure for change when the dialogue fails and how to encourage legal and institutional reform.

On the final day of the seminar, the participants worked hard to develop “The Amman Declaration on Monitoring Human Rights in Places of Detention”. Unfortunately, agreement could not be reached about the contents of the declaration. However, most of the recommendations identified are contained in different section of the present report.