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مجلس حقوق الإنسان

الدورة السادسة عشرة

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

معلومات مقدمة من شبكة المؤسسات الوطنية الأفريقية لحقوق الإنسان باسم المؤسسات الوطنية لحقوق الإنسان المعتمدة ضمن الفئة "ألف" في أفريقيا

مذكرة من الأمانة

تحيل أمانة مجلس حقوق الإنسان طيه الرسالة المقدمة من شبكة المؤسسات الوطنية الأفريقية لحقوق الإنسان باسم المؤسسات الوطنية لحقوق الإنسان المعتمدة ضمن الفئة "ألف" في أفريقيا*، وترد مستنسخة أدناه وفقاً للفقرة (ب) من المادة ٧ من النظام الداخلي الوارد في مرفق قرار مجلس الأمن ١/٥، وهي الفقرة التي تنص على أن مشاركة المؤسسات الوطنية لحقوق الإنسان تستند إلى الترتيبات والممارسات التي وافقت عليها لجنة حقوق الإنسان، بما في ذلك القرار ٧٤/٢٠٠٥ المؤرخ ٢٠ نيسان/أبريل ٢٠٠٥.

* ترد مُستنسخة في المرفق كما وردت وباللغة التي قُدمت بها فقط.

Annex

Written submission on the High-level segment on report of the SR on torture by the Network of African National Human Rights Institutions on behalf of “A”¹ Status National Human Rights Institutions in Africa to the Human Rights Council, 16th Session, 28th February to 25th March 2011

National Human Rights Institutions and their African Networks Roles in Prevention of Torture in Africa

Torture is a serious violation of human rights. It is strictly prohibited to use torture, which negates the principles of civil and political freedoms and human dignity. International law prohibits torture and other forms of inhuman or cruel and degrading treatment under whatever circumstances.

However, despite being stringently outlawed under the UN Convention Against Torture (CAT)², as well as a host of other binding and non-binding instruments aimed at protecting human dignity and the right to freedom and security of the person, torture continues to be practiced in a lot of countries round the world.

As far as Africa is concerned, the African Charter on Human and People’s Rights (the Banjul Charter)³ recognizes the dignity inherent in a human being and further prohibits torture and other inhumane treatment.

The Network of African National Human Rights Institutions (NANHRI), an organization that provides support to NHRIs in Africa and strengthens their capacities and visibility to enable them to provide effective protection, monitoring, promotion and awareness on human rights, is firmly committed to increasingly fight against torture and other cruel, inhuman or degrading treatment in Africa, to promote the role of African NHRIs in the prevention of torture, to strengthen their commitments on issues of torture and to strengthen the capacities of their staff for this purpose.

The collective efforts of the NANHRI and the African NHRIs are essential for effective human rights protection, prevention of torture and for building a culture of human rights in Africa, because the protection of human rights requires complementary and multi-layered enforcement mechanisms.

¹ The following are NHRIs with A status : National Human Rights Council of Egypt, Commission on Human Rights and Administration of Justice of Ghana, Kenya National Commission on Human Rights, Malawi Human Rights Commission, National Human Rights Commission of Mauritius, Conseil Consultatif des Droits de l’Homme du Maroc, Office of Ombudsman of Namibia, Commission Nationale des Droits de l’Homme et des Libertés Fondamentales du Niger, Commission Nationale des Droits de la Personne du Rwanda, Comité Sénégalais des Droits de l’Homme, South African Human Rights Commission, Commission for Human Rights and Good Governance of Tanzania, Commission Nationale des Droits de l’Homme du Togo, Uganda Human Rights Commission, Zambia Human Rights Commission, La Commission Nationale des Droits de l’Homme et des Libertés Fondamentales de Cameroun.

² www.hrweb.org/legal/cat.html

³ www.hrcr.org/docs/Banjul/afhr.html

I. Role and legitimacy of African NHRIs in ratifying and implementing international instruments to prevent torture

NHRIs are bodies constituted by States to promote and protect human rights. They play an advisory role on human rights nationally. A *Paris Principles*⁴ compliant NHRI is established either through the constitution or through an act of parliament that guarantees their independence and defines their structure, functions and powers. They have complete operational freedom, in relation to policy, program, priorities and activities, subject only to the law. A key function of these institutions is advocacy — urging support for human rights and influencing governments or international groups with regard to specific actions like the ratification and application of relevant national and international human rights instruments including the OPCAT.

In other words, the mandates of NHRIs traditionally tend to have rather broad mandates encompassing a range of human rights issues, with torture and inhuman or degrading treatment or punishment prevention forming only a part of their mandate.

NHRIs are thus ideally placed to contribute at each level of an integrated strategy to prevent torture and ill-treatment in their country.

NHRIs can contribute to the development of an effective legal framework by:

- encouraging the State to ratify relevant international human rights treaties
- advocating legal reforms to make torture a criminal offence and to prevent its use by public officials.

NHRIs can contribute to implementation of the legal framework by:

- reviewing detention procedures
- investigating allegations of torture
- contributing to training programmes for relevant public officials.

NHRIs can contribute to, and act as, control mechanisms by:

- cooperating with international bodies
- monitoring places of detention
- promoting public awareness.

In practice, some NHRIs receive individual complaints and have powers to issue binding orders to public officials, while others fulfill more the role of a think tank, or advisory body to the government. Being key and essential partners in the implementation of the African and international human rights instruments including the OPCAT, NHRIs are thus an important mechanism for complementing government's efforts in prohibiting and preventing acts of torture and other cruel, inhuman or degrading treatment or punishment.

They have an obligation to remind their governments of the imperative of undertaking effective measures to prevent all acts of torture or cruel, inhuman or degrading treatment or punishment. NHRIs with a broad mandate have a pivotal position as the key-stone of a strong national human rights protection system. They must remind them every step of the way that the right to live free from torture is not a privilege but a right.

⁴ www2.ohchr.org/english/.../parisprinciples.htm

Despite the multitude of international instruments to prevent torture or referring to torture, we choose to address the role of NHRIs in Africa, mainly in the implementation of the Robben Island Guidelines (RIG, regional instrument) and the OPCAT (international instrument):

1. Role in implementing the RIG

ACHPR adopted in 2002 the Resolution on the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines⁵). Therefore the interaction between ACHPR and African NHRIs will go a long way in instituting mechanisms to prevent torture through implementation of RIG.

The RIG provide a comprehensive rationale to prevent torture and other ill-treatment in Africa. The RIG thus provide details as to how states can achieve prevention of torture. The RIG, although not legally binding, reflect international standards in its provisions and the Guidelines were intended as a tool for implementation of such.

NHRIs can ably use the RIG in their work in their respective states to assist in the implementation of, for example, CAT recommendations.

They can also develop a strong cooperation with the RIG committee whose mandate includes promoting the implementation of these guidelines. This cooperation will permit to allow an exchange of expertise, training and support to the implementation of the RIG in the countries of NHRIs.

2. Role in ratifying and implementing the OPCAT

The Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), is setting up an innovative system for the prevention of torture and other forms of ill-treatment, composed of international and national preventive bodies. At an international level, the OPCAT has created a Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), consisting of ten independent experts.

In addition, by ratifying the OPCAT, States acquire the obligation to designate one or more preventive bodies at a national level, also known as National Preventive Mechanisms (NPMs). The OPCAT preventive bodies (SPT and NPMs) have similar functions. The task of the SPT and NPMs is to conduct regular, preventive visits to all places of detention, in view of making recommendations and proposing practical measures to improve the system of deprivation of liberty and the conditions of detention. In addition, they present their observations and comments on existing and draft legislations relating to the deprivation of liberty.

In Africa, and until September 2010, nine states ratified the OPCAT (Benin, Burkina Faso, Congo Kinshasa, Gabon, Liberia, Mali, Nigeria, Senegal and Togo). Another 8 African countries have shown their interest for the prevention of torture and other ill-treatment, by signing the OPCAT (South Africa, Cameroon, Congo Brazzaville, Ghana, Guinea Conakry, Madagascar, Sierra Leone and Zambia).

⁵ www1.umn.edu/.../achpr/tortguidelines.html

Moreover, the options of a potential NPM are discussed in seminars, conferences and workshops in many African countries. The Sub-Committee on Prevention of Torture recommended that *"the national preventive mechanism should be established by a public, inclusive and transparent process, including civil society and other actors involved in the prevention of torture; where an existing body is considered for designation as the national preventive mechanism, the matter should be open for debate, involving civil society."*

In this sense, a timely regional conference on the prevention of torture was organized from April 27-28, 2010, by the Association for the Prevention of Torture (APT) and Amnesty International Senegal, in collaboration with the African Commission on Human and Peoples' Rights (ACHPR). The event was held in Dakar, Senegal.

The conference aimed in particular at promoting the ratification and implementation of the OPCAT and supporting States Parties to establish and ensure the effective functioning of NPMs, encouraged the exchange of experience and good practices in preventing torture. It also laid the foundations of cooperation between NPMs emerging in Africa and brought about synergies between them and other national, regional and international actors involved in torture prevention.

The deliberations of the Conference led to the adoption of a set of substantive and technical recommendations, so called "The Dakar Plan of Action: 8 points Plan for Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Africa" (Dakar Plan of Action) which recall the universal prohibition of torture and other cruel, inhuman or degrading treatment or punishment as well as the need and obligation to prevent. The "Dakar Plan of Action" can serve as a road map to guide States in the setting up and functioning of NPMs. These recommendations can also be used as a tool for advocacy and dialogue by national, regional and international actors including within political and economic sub-regional institutions.

At the margin of the Conference, the APT and the ACHPR organized a consultative meeting on the Committee for the prevention of Torture in Africa (CPTA). It allowed African experts to discuss about interaction between the Robben Island Guidelines and the OPCAT with the aim of identifying the role of the CPTA in the ratification and the implementation of the OPCAT in Africa.

The participants made a series of recommendations for the effective implementation of the Robben Island Guidelines and the prevention of torture in Africa in general.

The Dakar Conference and the consultative meeting allowed an exchange of experiences and identification of good practices in prevention of torture. On one hand, they established synergies between the various national actors in regard to the ratification and the implementation of the OPCAT in Africa. On the other hand, they highlighted the contribution of regional and international actors in prevention of torture.

This conference, among others, raised the important role to be played by the NANHRIs.

Furthermore, it should be noted that many African states have an active civil society and national human rights institutions which are involved in campaigns to promote the ratification and implementation of the OPCAT. Interinstitutional committees, comprising representatives of government, NHRIs and civil society organizations, have been set up, for example in South Africa, Benin, Ghana and Togo. These committees or working groups develop strategies for the ratification of the OPCAT in their respective countries, organize seminars and conferences on the OPCAT and prepare draft laws for the designation of an MNP.

This is the case in Senegal where civil society organizations joined a coalition and played an important role in advocacy and mobilization for the ratification of the OPCAT and for

its implementation through the adoption of a law establishing a new specialized agency as MNP.

The OPCAT does not indicate the organizational structure of MNP. States Parties may establish one or more bodies, appoint a number of existing bodies, or combine the above options. There is thus no "model" solution. Each State is required to specify the mechanism which is best suited to its national context.

Two trends related to the MNP are emerging across Africa, which correspond to general trends in other world regions:

- The establishment of a new body specializing in the prevention of torture and other ill-treatment,
- Designation of existing NHRIs as an MNP.

Senegal and Nigeria have opted for the creation of new mechanisms. In Senegal, a law establishing a National Observer of liberty-depriving places was adopted in February 2009. In Nigeria, a National Committee on Torture has been created in September 2009. The creation of a new prevention body (National Observatory for the Prevention of Torture) is currently under study in Benin.

Mauritius and Mali designated their national human rights commission as MNP, respectively in October 2007 and 2006. This option is under study in Ghana, and discussions are underway in South Africa to assess the possible involvement of the national human rights commission in the NPM mandate.

II. Strengthening the role of NANHRI in preventing torture in Africa

1. Interactions between NPM and NANHRI

The question of cooperation between different actors for effective prevention of torture and other ill-treatment is at the heart of the OPCAT. Article 11 (c) of the OPCAT provides that the Subcommittee on Prevention shall “*Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.*” This need for cooperation with other actors is also valid for NPM. Thus, for a better implementation of the OPCAT at national level, it is essential for NPM to establish active cooperation with other stakeholders involved in prevention issues, including the establishment of centers of interaction and synergy. These interactions are at the international, regional and national levels.

In Africa, the NANHRI is an important player. Its experience can inspire emerging NPM in Africa with a view to creating an African network of NPM. Moreover, NHRI already play an important role at national level in promoting the ratification of the OPCAT and contribute to reflection and consultation on various options for NPM. This is the case, for example, in South Africa, Ghana and Togo. Similarly, as mentioned before, national human rights commissions in Mali and Mauritius have been designated as NPM. Both institutions are also part of the Network.

2. NANHRI-APT partnership

The Association for the Prevention of Torture (APT), which was behind the OPCAT, considers NHRI as key national actors in torture prevention and has therefore interacted and engaged on a number of initiatives and projects. Of particular relevance is the joint project that APT carried out with the Office of the High Commissioner for Human Rights (OHCHR) 'Actors for Change project' (2005-2007) which aimed to strengthen the capacity of NHRIs in the field of torture prevention⁶. The later was evaluated as an "unqualified success" by the European Union⁷.

A joint APT-APF-OHCHR publication entitled "Preventing torture: an operational guide for NHRIs"⁸ was released, drawing on the lessons learnt.

Combined with CCDH (NHRI of Morocco and president of NANHRI since November 2009 through November 2011) strong interest to carry out concrete activities on torture prevention, this publication presents an ideal opportunity to project strengthening the overall capacities of NHRIs in Africa.

After several discussions between these organs, it was decided to start a joint three year project for NHRIs in Africa, with a view to strengthen high level commitment on these issues as well as staff capacity.

Consequently, NANHRI, entered into a partnership convention with APT on November 5, 2010 for the period 2011-2013. The convention envisaged a continent united against torture and giving special preference to the role of NHRIs in the prevention of torture.

The signing of the mentioned convention clearly demonstrates NANHRI's recognition of the fact that independent and effective NHRIs are important instruments in the prohibition and prevention of torture.

(a) Purpose of APT-NANHRI Convention "*a united continent against torture*"

This partnership aims to strengthen the role of African NHRI in preventing torture in Africa.

Its specific objectives are:

- Strengthen the capacity of African NHRIs to enable them to be more active in preventing torture;
- Apply the publication: "Prevention of Torture: Operational Guide for NHRIs";
- Provide skills and knowledge to support national institutions to plan and undertake concrete activities for the prevention of torture in their countries, particularly through monitoring places of detention;
- Provide a platform for exchanging experiences and best practices between African NHRIs for concrete action to prevent torture;

⁶ In 2004 the APT organized jointly with the Uganda Human Rights Commission a training course for members and staff. In May 2006 APT organized jointly with the CCDH and the OHCHR a regional training workshop for French speaking NHRIs in Rabat, Morocco.

⁷ For more information on this project please refer to 'Evaluation of Project DDH/2005/112-936 « Strengthening National Human Rights Institutions » (OHCHR), March 2008.

⁸ The overall project was funded by the Asia Pacific Forum (APF). It includes a hard-copy guide complemented by a CDROM/DVD containing relevant publications and documents as well as interviews and training spots.

- Adopt a public statement on NHRIs and the prevention of torture.

(b) *Planned activities:*

The overall methodology of the project will include a strong element of mutual learning and exchange of good practices.

The project will consist of the following components and activities:

- (i) Questionnaire including a list of themes: sent to all the NHRIs to gather background information on the institution and needs. This will be attached to the invitation letter to the opening high level meeting. This will also include a list of suggested themes (based on the guide) for NHRIs to select from.
- (ii) Opening with one high level meeting: with all the representatives from the NHRIs to present the project and the selection of themes for the following workshops. The aim of this high level conference is to demonstrate a shared commitment of the members of NANHRI to prioritize the fight against torture in their activities in general and to implement practical tools (RIG and OPCAT) in particular, including mutually supporting and coaching their teams in this direction. This meeting will therefore be the basis for more technical meetings between employees of NHRIs that will be held thereafter.
- (iii) Three thematic workshops:
 - 2 day workshops for selected members from NHRIs on specific themes chosen by the NHRIs themselves.
 - Examples of themes include: investigating complaints, protecting victims and witnesses, enhancing the capacities of prosecutors and judges to deal with torture cases, training public officials (penitentiary staff, police), use of international and regional mechanisms, promoting awareness and conducting public inquiries.
 - At the end of the workshops, participants will have to report to their respective NHRIs decision making body. This will feed into a high level institutional commitment on the prevention of torture.
 - Members of the Committee for the Prevention of Torture in Africa (CPTA), the sub committee on the Prevention of Torture (SPT), NHRIs and National Preventive Mechanisms (NPM) from other regions shall be invited to enrich the debate and bring about additional expertise.
- (iv) Two regional workshops on detention monitoring: four day regional workshops focusing on detention monitoring (possibly including a visit to a place of detention).
- (v) Closing high level meeting: in the framework of NAHRI annual conference, each NHRI Commissioner will report on the impact of the project. Subsequently a public declaration on NHRIs and torture prevention will be adopted.
- (vi) Evaluation of the project:
 - During the thematic workshops, participants will complete pre and post test evaluations.
 - At the end of each thematic workshop, participants will complete one comprehensive evaluation form.
 - An impact assessment form will be sent to all the participants after sixth months after each thematic workshop.

- The project manager will undertake a mid term evaluation of results (end 2011/mid 2012) with a view to reorient future activities in line with original objectives if necessary.
- A final evaluation will be undertaken by an external consultant after the period of implementation (end 2013). This will help shape and inform future practices and whether more workshops on other themes should be organised.

Conclusion

Bearing in mind the role of NHRIs in implementing international and regional instruments for the prevention of torture (especially OPCAT and RIG) and interacting with national mechanisms for the prevention of torture (if it is not these NHRI that play this role), the NANHRI shows more willingness to promote and strengthen the capacities of its member NHRIs and their capabilities towards the prevention of torture and strives to achieve this. This is what is particularly reflected in the partnership it has with the APT, which shares the belief of the Network in the importance of the role that NHRIs can play in this area and the need to promote and consolidate it.
